Smog Check Jungle *by Denis J. Norrington* • Taking CRA National *by James Bemis*

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NOVEMBER/DECEMBER 1998 • VOLUME 9 • NUMBER 6 • $4.00

California Republicans Hold a Convention

Lungren reassures the troops: No break from Wilsonian opportunism

by John Kurzweil

Cautiously Hopeful

Legislative Republicans court the voters

by Christopher Shelton

plus

CPR's Guide to November Ballot Measures

by Francis Duclos

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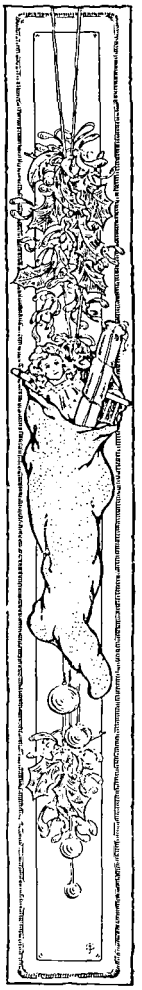

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CORRESPONDENCE

Where was Lungren?

Your analysis of Dan Lungren ("Dan Lungren's Run for Governor," *CPR*, September/October 1998) rings true.

I've been an observer of, and occasional participant in, the conservative movement as it re-shaped the Republican Party beginning in the '60s through to Reagan's presidency.

The line of battle was always clear: on one side, the Party's Rockefeller (then later, in succession, the Richard Nixon/Gerald Ford/George Bush/Pete Wilson) "establishment" wing, concerned peripherally if at all with the good of the country and mainly motivated to gain and hold perks, prerogatives, and power for itself.

The other side stood with the American people and with the plain and repeatedly proven wisdom of free markets, a healthy understanding that government is the greatest potential threat to our freedom, that family and religion are its strongest protectors, with the rule of law, peace through strength, and the other policies that any honest, normally intelligent man or woman could see flowing logically from the starting point: we're in politics to serve, not ourselves, but the country.

Your article made me ask myself: where was Dan Lungren through all this? I don't pretend to know everything he's done the last four decades. He may have done many great things. But the point is, if so, I don't know about any.

I take it Mr. Kurzweil at least feels the same way. How many other conservatives would say so too? It was always plain, as Mr. Kurzweil writes, that "from the start, everyone knew he [Reagan] was the outsider, the honest champion of the conservative cause." Why is it not so plain in Lungren's case?

I think if he had been the conservative the media and his GOP supporters say he is, we'd have known it.

Thomas McAdams
Sacramento

I just finished your article on Lungren. You are correct.

James Krieger
San Diego

In your piece "Dan Lungren's Run for Governor", you lament that Dan Lungren is not of the same leadership caliber as Ronald Reagan. You are probably correct. I would offer that Ronald Reagan's stature did not exceed the greatness of Abraham Lincoln, but he probably overshadowed Dwight Eisenhower. Lincoln, in turn, could not hold a cnadle to George Washington. My point is that the men who have made this country great have possessed their own varying levels of personal attributes. It may be a long time before we have another high-profile American worthy of mention in the same breath as Ronald Reagan. Until then, let's rally around the best man we have. Next to Gray Davis, Dan Lungren is Reagan, Eisenhower, Lincoln and Washington rolled into one!

Charles G. Curran
Elk Grove

John Kurzweil responds:

As our schools dumb down their curriculum and Bill Clinton lowers our moral standards, Mr. Curran would acclimate us to Mr. Lungren because — we can do no better! Actually, next to Gray Davis, Lungren is just Pete Wilson all over again.

Where was Deukmejian?

Why did George Deukmejian fail to groom leaders while in Sacramento? Once he had stepped up from attorney general to governor, he should have considered our future.

Brett Stuart
Placentia

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SACRAMENTO SPECTATOR

Much pre-election speculation among the highly-paid eminences and high-powered politicos with whom your *Spectator* slums concerns Assembly Republicans' post-November ideological direction, however many of lower house GOP members there are. After the primary, Congressmen Bill Thomas, Tom Campbell, Assemblyman Jim Cunneen, and other "Republican-in-name-only" worthies predicted a "loosening grip" by the "far right."

They said primary loses by conservatives in districts that conservatives now hold portended a move to the "center." The "center," to these folks, lies somewhere between Maxine Waters and the *L.A. Times* editorial board.

The truth is, most of these GOP replacements are an ideological wash. Pat Bates replacing Bill Morrow changes nothing. Bob DeMaille replacing the Inland Empire's Fred Aguiar is a net plus for conservatives. So is Tony Strickland replacing Nao Takasugi in Oxnard. Exchanging Gary Miller for Robert Pacheco in the infamous Paul Horcher L.A. district is, again, no change. Mike Briggs, running unopposed to replace Chuck Poochigian, will be only slightly more conservative, although Briggs will be more an activist conservative in the Capitol.

Only Dave Cox replacing Barbara Alby marks a distinct turn left from a current Republican incumbent, the only Assembly primary statewide where that statement can honestly be made.

Campbell, Cunneen, and the other whiners rest their case on three Northern California Assembly districts now held by Bernie Richter, Tom Woods, and Larry Bowler. But conservatives did not lose to liberals in these districts; rather, in each, one conservative lost to another.

Supervisor Dick Dickerson beat Sheriff Art Brandwood in Woods' district. Dentist Sam Aanestad defeated Richter's son-in-law, David Reade, in Richter's district. Utility district board member Anthony Pescetti defeated businessman Alan Nakanishi in Bowler's district. No significant ideological differences distinguished winners from losers in these races. Allowing for a nuance here and there, Aanestad, Dickerson, and Pescetti are conservatives in every meaningful and operative sense of the word.

Your *Spectator* knows ... he watched all three races closely. Confusion initially followed the primary because CRA had endorsed the three losers. Your *Spectator* knows that at least two of the endorsements were guided more by personal considerations and score-settling than ideology. So, while "official" conservative candidates lost, equally conservative candidates won.

Now it is up to the conservatives in and around the Capitol (both elected officials and staff) to make sure the moderates' predictions do not become self-fulfilling prophecies. While the three gentlemen in question are conservative, conservative missteps or heavy handedness could still drive them to the moderates. If the ideological balance of the new Assembly Republican caucus shifts toward the center, it will be mainly because conservatives did a poor job on the personal side of the equation.

Since there is no reason for this to happen, I don't think it will. Conservatives need only insure they understand the situation and that they prepare and execute a well-thought-out plan of action.

— A. P. C.

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The Empire Strikes Back

Politically beaten, financially devastated, the undaunted state Bar still somehow retains all the charming qualities Pete Wilson described: 'bloated, arrogant, oblivious, and unresponsive.'

MARK S. PULLIAM

THE STATE BAR has been the source of considerable drama during the past year, precipitated by Governor Pete Wilson's October 11, 1997, veto of its 1998 dues bill. The veto left the Bar authorized to collect only $77 of the $448 annual, per-lawyer dues that it had expected to pull in. Thus, for most of 1998, the Bar has been operating with drastically reduced funding and in a position of abject political weakness. Restoring the lost $371 from each of California's approximately 130,000 active state Bar members would have required a revised dues bill, passed as an urgency measure (to take effect before January 1, 1999 — urgency measures require a two-thirds vote of the Legislature), *and* Wilson's signature. It couldn't be done. And when fewer than 25 percent of its members heeded the Bar's pleas to pay the full dues voluntarily, in June nearly 500 Bar employees were laid off and most Bar operations shut down. To the Bar's dismay, hardly anyone noticed — or cared.

In addition, no 1999 dues bill passed at all, thanks largely to Bill Morrow's efforts in the state Assembly and, especially, to Republicans, led by Senator Ray Haynes, in the state Senate where the legislation finally died literally at the session's eleventh hour. So the state Bar is again in the unenviable position of needing a two-thirds vote of the Legislature next year to avoid again being limited to collecting the $77 per lawyer that barely keeps the Bar on life support. In other words, things have gone straight downhill since last May when (borrowing a phrase from Bar critic and Boalt Hall law Professor Stephen Barnett) I reported in the *L.A. Daily Journal* that "the sounds of an empire crumbling" were emanating from "the beleaguered bunker of the state Bar." ("Crumbling Empire," May 18, 1998).

Alas, this obituary was premature. The battle is far from over. Demonstrating the type of high-handed tactics and remarkable *chutzpah* that led Pete Wilson to charge the Bar with being "bloated, arrogant, oblivious, and unresponsive" to begin with, in recent months the Bar's board of governors has refused to back down; instead, it has shown that it would rather jeopardize the organization's very survival than surrender control to an appointed board as proposed by Pete Wilson.

IF THE governor's veto last year was "Bar Wars," the sequel is "The Empire Strikes Back." The board of governors, most of whom are now elected by the handful of activists among the Bar's membership who pay attention to such things, turned down a compromise negotiated by Assemblyman Robert Hertzberg (D-Sherman Oaks) that would have authorized the Bar to charge $335/year — enough to sustain the only vital function previously performed by the Bar (but now suspended due to lack of funding), attorney discipline — because the compromise entailed a form of governance that would have required them to step down *in lieu* of a Board appointed by the governor, Legislature, and the state Supreme Court. Thus, the Bar's leaders put their selfish interests above those of the membership they supposedly serve and even the public they are responsible to protect. This is the political equivalent of self-dealing. The liberal media, however, unfairly blames Wilson for the Bar's current dilemma instead of the real culprits: the Bar's would-be power-brokers. Having spent years "kissing up" through the ranks of the Bar hierarchy, the elected board can't bring itself to step down, even to save the organization.

In addition to hubris, the Bar board's refusal to com-

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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THE FRONT LINE

George Weigel

Twenty years ago today, the College of Cardinals stunned the world by electing the first non-Italian pope in 455 years and the first Slavic successor to St. Peter ever. But even the more adventurous cardinal-electors in 1978 could not have imagined the impact that John Paul II — the most visible human being, in history — would have on his times.

Pope John Paul has made the Catholic Church the world's premier institutional defender of basic human rights: Central and Eastern Europe, Latin America and parts of East Asia are very different places today because of his critiques of totalitarian and authoritarian governments and his proposals for building the free and virtuous society. The pope's insistence that freedom must be linked to truth and fulfilled in goodness has helped shape the public debate in established democracies. At a time when many figures on the world stage seem smaller than their responsibilities demand, he has continued, even amid physical limitations, to be an unavoidable reference point.

Both John Paul II's global activism and his teaching on virtually every aspect of the church's life have been shaped by his trenchant analysis of contemporary culture. As a young man personally familiar with the terrors of both Nazism and communism, Karol Wojtyla came to the conclusion that the crisis of the 20th century had to do with ideas. Humanity was risking self-destruction because of a crisis in the very idea of the human person — a crisis that was at the root of the century's destructive economic and political systems.

Why had a century that had begun with the confident proclamation of humanity's coming of age produced, in short order, three totalitarianisms, two world wars and technologies that threatened humanity's very existence? The mountains of corpses and the oceans of blood, the Holocaust and the Gulag Archipelago, were all, Wojtyla believed, the lethal products of false ideas about human nature, human community, human history and human destiny. In this crisis of world civilization, it was the church's task to challenge the new barbarians — be they fascists, communists or utilitarians who reduced human beings to objects for manipulation — in the name of human dignity and human freedom. In proclaiming a true humanism and a genuine freedom, the church was fulfilling its ancient mission and, as he told the United Nations in 1995, helping to prepare a "springtime of the human spirit" after a long, dark winter of suffering.

Pope John Paul II has extended this defense of the inalienable dignity of every human being in his recently issued 13th cyclical, *Fides et Ratio* ("Faith and Reason"). Now he challenges those among his fellow philosophers who claim that human beings cannot know the truth of things. In doing so, he as positioned the Catholic Church as the defender of human reason in a season of new irrationalities. In the most prestige-university philosophy departments today, the majority of philosophers have convinced themselves that human reason cannot, as they put it, "get to" truth. John Paul II describes this profound skepticism, rather gently, as a "false modesty" and urges philosophers to rediscover their singular vocation. Many contemporary philosophers have declared the great questions of the human condition — why there is something rather than nothing, what is good and what is evil, what is happiness and what is delusion — out of bounds. The pope asks them to take up these questions again, with a new openness to the possibility that theology might be an insightful conversation partner.

Religion that cuts itself off from reason deteriorates into superstition. But philosophies that prematurely foreclose the question of truth (including transcendent Truth, or God) so drastically limit what John Paul calls their "horizon" that they fall into the trap of solipsism: thinking about thinking about thinking, rather than thinking about truth. In both cases, the human project suffers. For when reason is suspect, technology trumps moral truth, human dignity is threatened, freedom risks captivity to someone's will to power.

The ancient Greeks and the masters of early Christian thought knew better, John Paul writes: They knew that reason could know the true, the good and the beautiful, even if it grasped them incompletely. Thus the path to a more humane 21st century, he suggests, lies in recovering our nerve by recovering some of the great intellectual riches of our civilization. It is a challenge wholly consonant with two decades of the teaching and public witness of John Paul II, the pope of Christian humanism. CPR

George Weigel is senior fellow at the Ethics and Public Policy Center in Washington. His biography of Pope John Paul II, Witness to Hope, will be published by HarperCollins in 1999. This article originally appeared in the Los Angeles Times.

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promise is motivated by partisan politics: literally betting the farm that Lt. Gov. Gray Davis will defeat Attorney General Dan Lungren in November and sign whatever dues bill the Bar wants. This reckless gamble is dubious on every front. First, it is by no means certain that Davis — who blew an early lead — will win, as the race is now in a dead heat. The Bar's brazenly political maneuvering will only antagonize Lungren if he is elected. Moreover, needing a two-thirds vote of the Legislature for a dues bill to take effect next year means that no matter who wins the election, the Bar has effectively forfeited the chance to collect full dues before 2000. In the process the Bar has told the GOP to drop dead.

THE BAR'S recent arrogance doesn't end there. On September 23, the board expelled long-time public member Wendy Borcherdt, a Wilson appointee. The independent-minded Borcherdt has been an unrelenting critic of the Bar's irresponsible policies and practices. She was removed from the Board literally on the eve of an important meeting of the human resources committee on which she served. Prior to her removal, she had intended to raise some sensitive personnel issues, such as questioning why some Bar employees were laid off, others are receiving reduced salary, but some are getting full pay. Eight Bar executives continue to earn more than $125,000 per year. She also intended to make sure that the Bar's executive director, earning $200,000 per year plus lavish perks, receives a proper performance review. The timing of Borcherdt's removal is suspect. She had previously announced she would step down effective as of the state Bar's scheduled annual meeting in early October, the traditional end of board members' terms. The board of governors may regret its unseemly haste to silence a persistent critic by dumping Borcherdt early, however: when the Legislature holds hearings next year, Borcherdt (who knows

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By WILLIAM E. SARACINO

We all know that liberals hate facts. Facts are the mortal enemy of liberalism and any other way of life built on lies, whether it is the Flat Earth Society or the modern Democrat Party. You might want to clip and save the following for the next time a dose of facts are needed on a lefty.

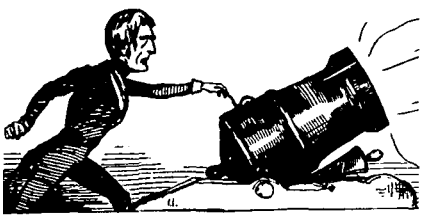
* Law-abiding citizens use guns to defend themselves against criminals 2.5 million times a year — or about 6,800 times a day. ("Armed Resistance to Crime," *Journal of Criminal Law & Criminology,* Northwestern University School of Law, Fall 1995)

William E. Saracino is executive director of Gunowners of California.

* Each year, more than 200,000 women defend themselves against sexual abuse by using guns. (Ibid)

* Police shoot and kill about 600 criminals a year. Law abiding citizens shoot and kill about 1,500 each year in self defense. (Ibid)

* Firearms are used more than 60 times more often each year in self defense by citizens than in incidents where the citizen gets shot or harmed in any way (National Safety Council, 1996)



* A child is 18 times more likely to die in a swimming pool accident than in a shooting accident. (National Safety Council, 1996)

* When firearms are used by citizens for self defense, 2 percent of the shootings end up involving an innocent person mistaken as a criminal. When firearms are used by police, 11 percent of the shootings end up involving an innocent person mistaken as a criminal.

The government cannot protect you most of the time. Society at large is safer when criminals don't know who among us is armed and prepared to protect themselves and their families. CPR

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where the bodies are buried) will be the star witness.

The litany goes on. The FPPC has fined the Bar and its lobbyist, Mel Assagai, $2,000 each for an illegal incentive clause in Assagai's contract. Even though the Bar's lobbying efforts have been dead in the water for some time, Assagai continues to receive *$450,000 per year.* In response to a U.S. Supreme Court decision calling into question the Bar's use of client trust account interest (IOLTA) monies to finance activist litigation (to the tune of $10 million a year), the state Bar issued a press release defending the IOLTA program, quoting from the *dissenting* opinion. And the Bar seems intent, though the organization is moribund, on pressing forward as much as it can with business as usual: holding board elections — even selecting a new president — and going forward with its October Conference of Delegates meeting, even though Governor Wilson's 1997 veto resulted directly from the controversial positions adopted by the Bar's highly-political Conference of Delegates.

FINALLY, DESPITE the cessation of some critical Bar functions such as attorney discipline, the Bar has not only continued the controversial Judicial Nominees Evaluation Commission ("JNE" — called the "Jenny" Commission), it has elevated an ACLU chapter president to be the vice-chair of that group. The JNE Commission is an obscure but powerful agency that since 1979 has effectively usurped the governor's power to make judicial appointments. How, you might ask, can the financially-distressed Bar afford (at $340,000 a year) to operate what many observers consider a non-essential activity at a time it is too strapped to process attorney discipline complaints? Simple. The JNE Commission passed the hat among large firms, soliciting contributions of up to $10,000 a pop. The potential for a conflict of interest is obvious: JNE might be called upon to evaluate partners in the law firms that made (or declined to make) a "voluntary" donation. The Commission's solution? Even though commissioners made the solicitations, the identity of donors will supposedly be kept confidential, *even* from the Commission. What a joke.

This clandestine outfit has operated in secrecy long enough. The last thing it needs is *less* disclosure and public scrutiny. *The little-known JNE Commission has, with one exception, exercised effective veto power over the governor's judicial appointments for nearly 20 years.* The governor cannot appoint a judge until the JNE Commission has made a secret evaluation of the candidate (reported only to the governor), which remains confidential unless the governor chooses to ignore a "not qualified" rating, in which case JNE is permitted to make the rating public. While the JNE Commission's evaluation is not legally binding on the governor, a "not qualified" rating serves as a *de facto* black ball. Until 1996, no governor had ever appointed to the bench a candidate rated "not qualified" by the JNE Commission.

How often do the governor's carefully screened nominees meet this fate? An amazing 25 percent of the time. From the inception of the JNE Commission to the present, approximately 1,250 candidates (out of a pool of 5,000) have been silently torpedoed, without due process and without effective recourse. This is the most compelling evidence that JNE makes its ratings based on criteria other than the candidates' qualifications. It is incredible to believe that a governor's experienced staff, after considerable review and investigation of applicants' backgrounds, and frequently after input from informal local screening committees, would submit unqualified candidates at the "final cut" *25 percent* of the time. The JNE Commission insists its work is "helpful" to the governor, but John Davies, Wilson's Judicial Appointments Secretary, said he is "ambivalent" about JNE continuing to evaluate candidates. Hardly a ringing endorsement.

The JNE Commission has degenerated into the type of special interest clique that is typical of clandestine organizations (run not just by lawyers but by "Bar groupies") not accountable to the public. Regardless of what one thinks of their views, recent past JNE Commission chairmen and co-chairmen have often failed to represent the broad political views even of the legal profession, much less of the public as a whole: one was a public defender from San Francisco active in the National Lesbian & Gay Law Association, for instance; another,

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a non-lawyer officer of the Mexican-American Legal Defense and Education Fund. The current vice-chairman — who is slated to become chairman January 1 — is attorney Charles Bird, the activist president of San Diego and Imperial Counties ACLU (which has, among other things, opposed San Diego's juvenile curfew ordinance and sought the removal of public monuments because they are in the shape of a cross). Is it any wonder we have so many activist judges?

Who appoints the JNE Commissioners? The board of governors of the state Bar. Unlike the ABA's judicial nomination review committee, JNE is not a "Blue Ribbon" panel of distinguished lawyers. In practice, service on JNE has become a cherished prize for veteran Bar activists, no matter how pedestrian their qualifications. Although ostensibly non-partisan, the JNE Commission (even more than the Bar itself), reflects the liberal biases of its members. Bird's appointment as vice-chairman exemplifies this. Although the Bar is politically wounded and struggling to survive, it remains true to form: naming the head of a left-wing ideological organization with a declared, vested interest in a liberal activist judiciary to guide its agency in charge of passing supposedly impartial judgment on potential judicial nominees — the fox guarding the hen house.

Tellingly, the JNE Commission's most ignominious moment was also its only appearance in the public limelight — its disgraceful attempt to sabotage Governor Pete Wilson's appointment of Justice Janice Rogers Brown to the California Supreme Court in March 1996. The JNE Commission voted 20-3 to rate Justice Brown, an extraordinarily talented judge, "not qualified" for the Supreme Court, even though JNE had previously rated her "qualified" for the Court of Appeal where she was currently serving. Her crime? Brown is an articulate conservative. Governor Wilson courageously chose to ignore the Commission's rating and appointed her anyway, largely because he had enough personal experience with the nominee — she had served four years as Wilson's Legal Affairs Secretary — to *know* the Commission was wrong. Accordingly, Justice Brown became the first candidate rated "not qualified" by the JNE Commission *ever* appointed to the bench.

The controversy over Justice Brown subjected JNE to long-overdue public scrutiny. A state Bar advisory committee was appointed to investigate the debacle. Several largely cosmetic recommendations were adopted, none going far enough. The JNE Commission continues to meet in secret, funded by "donations" from firms whose members often come before it to be "rated," while the Bar cries publicly it can't afford to pursue the disciplining of errant attorneys.

Arrogance, extravagance, and insolence brought on the state Bar's troubles. The organization responds with redoubled arrogance. This is an outfit incapable of responsible self-governance. Let the Supreme Court assume the Bar's admission and discipline functions. The rest of the Bar should be abolished. CPR

THE MIDNIGHT ECONOMIST

Majorities, Minorities, & Intellectual Heritage

Universities cannot fulfill their mission through the crude, adolescent process of counting ethnic noses.

WILLIAM R. ALLEN

PEOPLE, IN contrast to dogs, are hardly fit companions. Living together civilly and productively is delicate, at best, and it is complicated by ethnic differences. Minimal good will is necessary, but it is not sufficient: Some degree of comprehension of, and agreement on, certain psychological, sociological, and professional fundamentals also is required. A few years ago, a writer of Mexican background wrote a poignant newspaper essay concerning the plight of racial and national minorities on universi-

William R. Allen, from his vantage point in the UCLA economics department, is confident that campus "diversity" is much more a consequence than a cause of institutional academic excellence.

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of governors of the state Bar. Unlike the ABA's judicial nomination review committee, JNE is not a "Blue Ribbon" panel of distinguished lawyers. In practice, service on JNE has become a cherished prize for veteran Bar activists, no matter how pedestrian their qualifications. Although ostensibly non-partisan, the JNE Commission (even more than the Bar itself), reflects the liberal biases of its members. Bird's appointment as vice-chairman exemplifies this. Although the Bar is politically wounded and struggling to survive, it remains true to form: naming the head of a left-wing ideological organization with a declared, vested interest in a liberal activist judiciary to guide its agency in charge of passing supposedly impartial judgment on potential judicial nominees — the fox guarding the hen house.

Tellingly, the JNE Commission's most ignominious moment was also its only appearance in the public limelight — its disgraceful attempt to sabotage Governor Pete Wilson's appointment of Justice Janice Rogers Brown to the California Supreme Court in March 1996. The JNE Commission voted 20-3 to rate Justice Brown, an extraordinarily talented judge, "not qualified" for the Supreme Court, even though JNE had previously rated her "qualified" for the Court of Appeal where she was currently serving. Her crime? Brown is an articulate conservative. Governor Wilson courageously chose to ignore the Commission's rating and appointed her anyway, largely because he had enough personal experience with the nominee — she had served four years as Wilson's Legal Affairs Secretary — to *know* the Commission was wrong. Accordingly, Justice Brown became the first candidate rated "not qualified" by the JNE Commission *ever* appointed to the bench.

The controversy over Justice Brown subjected JNE to long-overdue public scrutiny. A state Bar advisory committee was appointed to investigate the debacle. Several largely cosmetic recommendations were adopted, none going far enough. The JNE Commission continues to meet in secret, funded by "donations" from firms whose members often come before it to be "rated," while the Bar cries publicly it can't afford to pursue the disciplining of errant attorneys.

Arrogance, extravagance, and insolence brought on the state Bar's troubles. The organization responds with redoubled arrogance. This is an outfit incapable of responsible self-governance. Let the Supreme Court assume the Bar's admission and discipline functions. The rest of the Bar should be abolished. CPR

ACADEME

Hucksters All

CSU's chancellor says his campuses improve 'culture' while CSU Northridge sponsors a porn festival; a high school celebrates 'reform' while its students' scores drop into the basement.

RICHARD FERRIER

CALIFORNIA STATE University Chancellor Charles Reed, the former chief of staff to Florida's Democrat Governor Bob Graham, recently celebrated his system's acquisition of the Camarillo state Mental Hospital (which, he hopes, will become the system's newest campus — CSU Channel Islands) by telling the press that the addition of a CSU campus would improve *any* community's cultural life. Meanwhile, the CSU campus closest to Camarillo, CSU Northridge, sponsored an International Conference on Pornography in August, complete with surveys of undergraduates' responses to porn movies' climax shots, a celebratory "Night of the Stars," and awards ceremony. Perhaps the San Fernando Valley would care to dispute the notion this represented a step up for its cultural life.

In addition to this argument about bettering local culture, CSU's hucksters promoting the proposed CSU CI campus also say it would address the needs of a huge "under served" population of eager Ventura and Santa Barbara County high school graduates panting to rush to the University if it is developed. But, as Bill Clinton would understand, it depends upon how you define

Richard Ferrier, a member of the Thomas Aquinas College faculty, is CPR's *higher education correspondent.*

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"under served." Do they mean these graduates are being denied the opportunity to attend college? Figures from California's Department of Education belie that. As a matter of fact, they show these locals go to college in higher percentages than Californians as a whole. One thing the hucksters do not point out is that, because of economies of scale, any new campus's per-student costs are exorbitantly high until enrollment climbs to about 15,000. At that level, each student represents a cost to taxpayers of about $7,500 per year — the average cost in the CSU system as a whole. With that in mind, the proposed new campus's planners have projected enrollment of 15,000 for Channel Islands, a figure determined by the necessity of projecting costs within the system average but duplicitously *justified* to the public as reasonable, if we don't mind assuming without evidence that Ventura and Santa Barbara counties contain large numbers of "under served" high school graduates. It's a doubtful assumption. As we've seen, these graduates attend college now in higher-than-average percentages. Even should a Camarillo campus succeed in diverting a full 10 percent of both counties' high school graduates away from the other colleges and alternative pursuits they now follow, it would have gained only about *3,000* full time students. When the predicted "huge demand" fails to appear, look for the CSU brass to fill the campus with adults taking the $7,500 each of taxpayer money for vocational advancement or life style amelioration.

HUCKSTERISM BY educational administrators is by no means limited to higher education. To illustrate, I report some recent history of Ventura County's Santa Paula High School, which happens to be where my 16-year-old son David is a Junior and a member of the football team. It is also not a school beset by the special difficulties afflicting many big city establishments: Ventura County is largely crime free and contends with a far smaller and more easily managed population of immigrants speaking little or no English than does, say, Los Angeles. Also, the county has nothing like a huge, powerful, obstructionist United Teachers of Los Angeles-type union to deal with.

But it does have Santa Paula High School Superintendent Bill Brand. Last year, Brand jammed a set of liberal "reforms" down our throats at SPHS. They amounted mainly to abolishing the old and respected system of honors classes and putting all but the disabled in so-called "college prep" courses. You may have read about our school recently in *Time* magazine regarding a dramatic improvement in its students' SAT scores this year. Kudos also came in from the *Ventura Star* and the *LA Times,* crediting the improvement to Brand's "reforms." I wish the glowing reports of academic improvement were accurate, particularly because it is my son's school. But they are not.

The SAT scores *were* up about 90 points over those of the previous two years; but *those* scores were the school's worst in the last decade. Also, even this faint improvement had nothing to do with Brand. The 1997 seniors who took the test were educated under the pre-Brand regime, which included the respected honors classes. Another reason the scores rose is the continuing recent trend at the school of ever-smaller portions of the senior class taking the test. Last year's "improved" average combined score of 953 (still about 40 points less then California's statewide average) was achieved with only 36 students taking the test. That's only 15 percent of the senior class, down from 18 and 20 percent the previous two years, and 'way below the 22 percent average maintained since 1992.

Brand's spokesman at SPHS, Principal Tony Gaitan, told the *Ventura Star* last year that, "our goal is to have more students take the SAT test every year." Since calling all courses "college prep" and diluting honors classes is supposed to encourage more low-achieving students to take the SAT and go to college, this drop to 15 percent, the lowest in the decade, is a particularly telling failure. The experts at the educational watchdog group Mathematically Correct point out that the drop to 15 percent should cause rising scores because, typically, academically marginal students account for the fall-off. Statewide, about 36 percent of seniors take the SAT. For each percentage point that the proportion of seniors taking the test falls below that 36 percent average, Mathematically Correct predicts an increase of about 5 points in the average score on *both* Math and Verbal halves of the test. If we assume a correction only half that large, SPHS still lands in the basement.

That's also where the STAR test results put it. And the latest available diagnostic tests show that eight out of nine SPHS graduates going on to the not-too-demanding CSU failed the mathematics test, and required remedial mathematics. *Eight* of *nine.* But none of this keeps the hucksters from wearing their happy faces and promising us the trim figures of successful, high-promise college students if we stay on their diets of progressive education. And the press laps it all up.

Conservatives and intellectually serious liberals have made strides in recent years, including the invaluable STAR test victory, but unless we gird ourselves for the long fight, including exposing the hype of the educrats, we're never going to win the struggle for a restoration of quality education in California. CPR

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The Scolds of the Press

They've been hammering Lungren and Davis for dodging issues that will most vex California the next eight years. And this time, the scolds are right.

TIM W. FERGUSON

THE SCOLDS of the press, like George Skelton of the *Los Angeles Times* and John Jacobs of the *Bee* papers, have been hammering the gubernatorial candidates for dodging the issues that will most vex California over the next eight years: namely, how to accommodate growth, especially that from an underskilled immigrant population. Where will people live, how will they get water, how will they be schooled, how will they avoid congestion? And you know what? The scolds are right, to a degree. Those — and taxes and litigation, of course — are the greatest "problems" ahead. They defy politicians' talking points. Or 30-second spots (from which, this election season, you'd think California's biggest concern is Indian gaming).

The *Los Angeles Times* by late August was noticing that housing scarcities were impinging on Southern California's growth, as they earlier hit up against the Bay Area's boom. And the *San Jose Mercury News* gave full force to the antisprawl warnings of Stephen Levy's think tank in Palo Alto, where Silicon Valley workers commute for hours in order to find affordable living. Indeed, it's true that insufficient shelter is Topic A among growth economists in the Western U.S. — you can't add employees when they can't manage a place to live. The main reasons for this are Americans' desire to live in spacious homes (which leads builders to produce fewer and grander units), their proclivity to sue condominium builders for alleged defects and thus discourage such construction, and their increasing resistance to allowing others to crowd in around them. Sometimes this NIMBY attitude carries an environmental banner -- precious resources in short supply, etc. etc. — but often it's just a simple desire to keep a comfortable quality of life by restricting later entrants into a community. The politics of that equation are a virtual lock: only the people already there vote. Once you're willing to countenance infringements on private-property development through zoning and other restrictions — which most Republicans are quite willing to do at the local level — it's hard to make a case that a suburb should find it in its own interest to see a high-density housing project plopped in its midst. No surprise, then, that growth controls are a bipartisan favorite.

But the economy takes more people as it prospers. On the statewide level, water, transportation, and school considerations enter in. Many have forgotten that one of the first acts by the "old" Pete Wilson as governor was to gear up a growth management team (headed by Rich Sybert, remember?) to deal with such issues. The recession knocked the stuffing out of that, but you can expect to see something similar under Wilson's successor. Wilson himself has sought to deal with school crowding by his class-size reductions (which Democrats are pushing at the national level, it's worth noting) but vouchers have barely been tried. There've been gradual shifts of water rights from farms to cities through pricing mechanisms, but the State Water Project is stymied by north-south arguments. And mobility? Rapid transit is discredited by the Los Angeles subway fiasco, but peak-hour pricing on highways is getting only slow acceptance.

The trap is to think that only massive doses of political power can attack the "big issues." In fact empowering the market to let consumers choose is the long-run answer. In the case of restricting unpopular development, property rights could be respected through some form of land trust, with a purchase at a fair price instead of virtual expropriation. That means the body politic would have to face up to the real cost of keeping Southern California, for example, one of the least densely populated metropolitan areas of the United States. (Yes, that's right — *least* dense.) Alternatively,

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higher-intensity development along designated corridors could be pushed in order to address the demands of a growing population. But this, too, would take political *cojones.* The only substantive move for affordability was the deal that GOP legislators cut to get developers off the hook for fees to support public services in return for placing the huge school bond issue on the November ballot. A Faustian bargain, that.

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Whether accomplished through market measures or "public-private partnerships" (government subsidies and favors), the big steps to accommodate a California of 40 million-plus are going to come with a bill. Either you pay voluntarily for your neighborhood's open space, your extra water, and your fast lane on the "freeway," or the government gets involved and sends you the bill. If there were serious debates over these topics, the question of more taxes would come up — the taxes that an activist Sacramento, not content with market solutions, must find to pay for "infrastructure needs." Think about where a Dem governor and Dem Legislature would go looking for moolah. Some sort of split-roll change to Proposition 13, so that "business" pays more property tax? This looming tax grab is the great non-issue of the 1998 campaign — and not even the op-ed pundits are raising it. And where is big business focused? Spending a fortune to defeat the Nader electricity proposition.

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Without a compelling fiscal message, Dan Lungren has banked his race on the old law-and-order issue. With the big dropoff in crime, the AG might seem to be in order to collect chits. But the "Churchill problem" — win the war, and your reward is the boot — may be haunting him. The statistical gains make the issue cut less. And Gray Davis has been effective at masking whatever lenient urges he may have. Rather than attempt a complex discussion of how the judges he'd appoint would differ from Davis's selections, Lungren resorted to Rose Bird. As Harriet Chiang of the *San Francisco Chronicle* was early and effective in pointing out, however, that gun has lost its powder. Davis, she reported, wouldn't support Bird's 1986 voter confirmation. So Lungren is left trying to show Davis was somewhat less punitive in how he'd handle repeat offenders. Okay, so he'd give 'em 25 years instead of life — it doesn't appear to be a big difference. Both men seem to have a "no tolerance" position on adult use of "hard" drugs. For all we know, the Democrat might actually be better from a libertarian standpoint on curbing abuse of prosecutorial powers such as asset seizures. Overall, though, it's likely that Lungren's approach to the judiciary would be more appealing to *CPR* readers than Davis's — the disappointments of Pete Wilson, notwithstanding — and therefore it's unfortunate no mass media can spare the time and space to delve into the full explanation of that. (Basically, the answer is that Democrat Party appointees are to the left of Republican selections. This is true for appointments down the line, but it's a factor that "swing voters" have a hard time grasping.) All the while, Lungren gets dinged because he dared to criticize police unions, some of the most obnoxious public-employee groups around. It's been a frustrating campaign.

♣ ♣ ♣

Bilingualism has been repudiated in the classroom, but lives on in the most basic civic function. An item in the *Orange County Register's* political-notes column finds that conservative county's registrar has full-timers doing "voter registration outreach in Spanish and Vietnamese." Required by the Voting Rights Act amendments from Washington, according to the *Register.*

♣ ♣ ♣

Congressman Jim Rogan is getting a buildup from the national press on the impeachment debate — and state Republicans can take some heart in that — but his colleague Chris Cox enjoyed an unexpected boost from *Business Week,* whose Washington staff is not always friendly to the GOP. "The Smart Missile Aimed at Clinton," it headlined an article about Cox and his special committee investigating the administration's military technology-to-China scandals. Even if November leads to a statehouse disaster for the GOP, the Party may yet emerge from this election with some future prospects.

♣ ♣ ♣

If only journalists were as persuasive as car salesmen ... the electric vehicle might actually have a customer base. Even as state officials back off the EV production mandates, the media keep trying their darnedest to sell the public on these impractical autos. The *Orange County Register* put another promotional feature on the front page featuring some nutty fellow who prefers the GM electric model to his Lexus even though he has to baby the accelerator to keep it from running dry and his round trip from Laguna Hills to Long Beach takes 45 minutes longer while he recharges to make it home. Still, it's fun — "the largest video game I know." Yeah, right. How about some puff pieces on the unicycle? CPR

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COVER ARTICLE

Legislative Election Outlook

by Christopher Shelton

ANYONE FAMILIAR with the worlds of small business or real estate recognizes the importance of the phrase "location, location, location." The fortunes and numerical makeup of the GOP caucuses in both legislative chambers next session turn on another mantra — "turnout, turnout, turnout."

Simplistic as it may sound, that is now the opinion of most political observers without an ax to grind. The Republicans have done a good job in enough other categories (with the question of money always relevant and to be discussed later) that they are in a position to make serious runs at a majority in the Assembly and a three-seat pickup in the Senate.

Both the Senate and Assembly GOP campaign teams had good candidate recruitment years. Senate Republicans were disappointed when Assemblyman Fred Aguiar (Ontario) decided to return to the county board of supervisors instead of running for Ruben Ayala's vacant 32nd district seat. Aguiar would have been a strong candidate, and might even have dissuaded Democrat Assemblyman Joe Baca (San Bernardino) from making the race. However, Jim Brulte went to work and recruited another credible candidate in local Mayor Eunice Ulloa.

The vacant, wine country 2nd Senate District finds wine-heir John Jordan carrying the Republican banner. The likewise vacant but Democrat-held 6th district in Sacramento County saw Chris Quackenbush recruited and win a tough primary. So the Senate GOP leadership started the fall campaign with their candidate wish list almost in perfect order.

While the Assembly GOP had a few more disappointments in candidate recruitment, they also have more targets to shoot at. Having one or two top quality candidates decline to run (Tom Berryhill of Stockton comes to mind) is not the thoroughly disruptive event it would be on the Senate side.

Of the currently-held Republican seats, only Brooks Firestone's Santa Barbara-based 35th district is at risk. Jim Morrissey of Santa Ana (A.D. 69) had been on that list also, but a strong performance in the primary election and a weak Democrat opponent have moved him to the "watch" category. The Assembly GOP leadership got its wish in Santa Barbara when Chris Mitchum, son of Robert, won the June Primary. Additionally, strong challengers were successfully recruited for the weakest Democrat incumbents around the state. So both caucuses emerged from the primary with the candidates they wanted. Now let's look at some specifics.

In the Senate, the arithmetic favors the GOP, which currently holds 16 seats. Of the four Senate seats considered "in play," only one — Dick Monteith's Modesto-centered 12th district — is occupied by a Republican. Events during the primary election, combined with open and ugly Democrat internecine warfare, have made Monteith a sure winner. That leaves only three seats — all currently held by Democrats who are retiring from the Senate — up for grabs. They are Ruben Ayala's in the Southern California Inland Empire; Leroy Greene's in Sacramento, and Mike Thompson's in the wine country/north coast. All three races are tough, hotly-contested, high-budget affairs. All three are very close. And in what would be a repeat of the pattern in Assembly races from 1994 and 1996, all three of these races could flip the same way for one party or the other on the basis, literally, of a handful of votes.

Republican Ulloa faces 10-year Assembly veteran Baca in the Southern California contest. Complicating things for Ulloa a bit is that Baca really isn't your run-of-the-mill liberal Democrat. He has a virtually perfect

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"pro-gun" voting record which has drawn endorsements from the NRA and the California Rifle and Pistol Association and an "A" rating from Gun Owners of California. He also strayed from the Party line (though not nearly as far as on guns) on some business issues. Baca is well-known and well-liked in his portion of the Senate District, and has been planning to run for the seat for at least four years. Ulloa started out relatively unknown compared to old war-horse Baca. She was personally recruited by Senator Jim Brulte, who has made winning this seat a top personal priority. By all accounts she has developed into an effective campaigner, contrasting her local service with Baca's tenure as part of the "problem" in Sacramento.

BRULTE'S PERSONAL attention to this campaign is Ulloa's strong suit. This is his backyard and he wants to win. The demographics of the district make it truly "toss-up" turf in things like registration and past voting patterns. It is becoming more Republican by the year because of housing patterns. Democrats realize that if they lose this seat this year, it is unlikely they will ever get it back. However, a "local boy" like Baca, if he gets over this hurdle, would be in a strong position to hold the seat till term limits force him out in 2006.

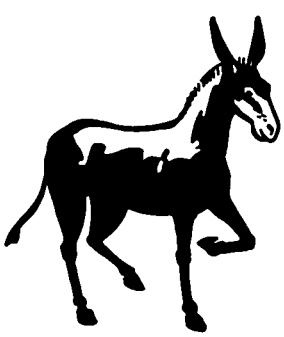
Three hundred miles to the north, encompassed within Sacramento County, is the district Leroy Greene is vacating. Taken as a whole, this is also a closely balanced, "toss-up" seat. However, the markedly different Assembly districts that constitute it present both parties a difficult challenge. Half the Senate District is represented by Barbara Alby in the Assembly. The Alby seat is a solid Republican plurality in registration and turns in larger and larger majorities each year for statewide GOP candidates. But the Senate District's other half is represented by Democrat nominee Asemblywoman Deborah Ortiz. The Ortiz seat is heavily Democrat. GOP registration is below 30 percent, and there are few "switch" Democrats on the voter rolls. However, the Ortiz district contains 40,000 fewer total voters than Alby's district. Democrat Ortiz is a highly partisan, highly abrasive liberal feminist. While meeting success with each attempt to climb the political ladder, she has left bitterness in Democrat ranks along the way. While the Democrats have a facade of unity here, the defection rate among usually reliable Democrat rank-and-file is noticeably higher this

California Political Review's

1A: $9.2 billion school facilities bond: Assemblyman Tom McClintock said Prop. 1A, which will cost California $15.2 billion, was like an average family adding $2,000 to its credit card debt. "Bonds are the state's MasterCard and California families are obligated to pay the statement off in full." Proponents say the $30 billion education budget is too small; schools need repair and more schools should be built.

1: Property tax base-year value transfer: Permits property owners forced to buy new property to retain Prop. 13's assessed value protections. Proposed after residents of an area declared a Superfund cleanup site were forced to relocate. Little public opposition.

2: Transportation Funding: The Legislature wrote this initiative to discourage state and local budget writers from diverting tax and fee revenues earmarked for transportation and related services to plug gaps elsewhere in their budgets.



3: Presidential Primaries: Exempts presidential primaries from political hermaphrodite Tom Campbell's 1996 "Open Primary" Prop. 198. Both major national parties will deny California voters a voice in nominating their presidential candidates if the state's presidential primary allows cross-over votes. If passed, voters will receive presidential nominating ballots by party registration. Critics say it violates the "spirit" of 198.

4: Body-gripping Traps Ban, Animal Poisons: This Doris Day-backed measure bans commerce in "raw fur" products and use of inexpensive animal traps and poisons. Protects abundant predatory pests such as coyotes and raccoons, natural enemies of rare species such as the Least Tern. Farmers will no longer be able to set their own traps, forcing meat, wool, poultry, and other animal product prices to rise. Probable increased danger to humans as animal predators increase. Day and the Sierra Club say current law allows inhumane trapping.

5: Tribal State Gaming Compacts: Tribal Casinos: Would remove many recently-imposed legal obstacles to full-service casinos on Indian reservations. Current law permits Indian-run gambling operations, but under the more restrictive "Pala Compact." Conservatives and liberals on both sides of this one.

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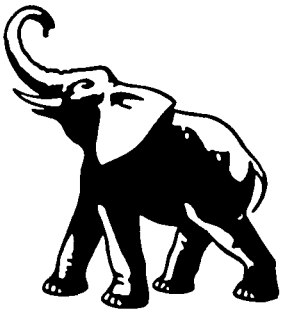
time around than other recent elections in the area. However, Ortiz will be well funded, has proven in the past that she lets nothing get in the way of her will to win, and has a capacity to work 20 hour days. Strong stuff in any endeavor, but particularly in politics.

THE GOP nominee, Chris Quackenbush, is the wife of state Insurance Commissioner Chuck Quackenbush. This hindered her before the primary because conservative activists opposed her, not on the basis of her positions, but because they had trouble believing she was so different from her husband. Chuck is a certified "Silicon Valley" moderate Republican. Chris appears to be, and by all accounts is, a mainstream conservative, with "CRA-type" positions on everything from guns to life to taxes. Chris Quackenbush quickly established her own identity in the campaign. Those who know both of them uniformly come away with the judgment that Chris is the deeper and stronger campaigner of the two. She started several successful Silicon Valley businesses when it took more than just throwing darts at a stock page to make it. She has developed into a polished candidate, coming across much more down to earth than the always strident and shrewish Ortiz. The secret to this race is which half of the district votes. The numbers would normally favor a Republican in an open-seat scenario. However, an inordinate number of Democrat registrants are also state employees, and you know they will not forget to feed the golden goose on election day. This will probably be the closest of the three elections.



The last contested Senate district runs from the Napa and Sonoma Valleys up the north coast to Crescent City on the Oregon border. This is classic ticket-splitting territory. Reliably Democrat at the top of the ticket most years, this district has sent Republicans Frank Riggs to Congress, and Bev Hansen and Don Sebastiani to the Assembly. The GOP scored a coup when it persuaded John Jordan of the winery family to make the run. The Democrats ended up with local supervisor and long time liberal activist Wes Chesbro, and therein lies a tale.

Chesbro's political career has strong ties to Tom Hayden, going back to the radical "Campaign for Ec-

November Proposition Guide

6: Horses Slaughtering, Sale of Horsemeat for Human Consumption Ban: Title says it all, except that the authors seem to have too much time on their hands.

7: Air Quality: Tax Credits: Offers business and agriculture tax credits to reduce air polluting practices; adds tax credits for replacing older lawn mowers and wood-burning fireplaces. Could deter hard-core environmentalist-backed bans on gasoline-powered lawn mowers and wood-burning fireplaces, extreme measures that could undermine support for the "environment."

8: Class Size Reduction: Wilson's plan to codify class size reduction constitutionally. Also creates "parent site councils" to dilute bureaucracy, but *adds* bureaucracy in the form of a new public schools "chief inspector." Critics say education hacks will circumvent reforms, but some support 8 after hearing schools chief Eastin opposes it because "parents aren't always qualified to make major decisions about their children's schools."

9: Electric Utilities Assessments, Bonds: As the ads used to say: brought to you by ... Prop. 103's Harvey Rosenfeld, who dislikes California's 1996 five-year plan to deregulate/restructure the electric industry. Rosenfeld prefers a Legislature-imposed rate-reduction edict.

10: Childhood Development Programs: Tobacco Surtax: Brought to you by Rob Reiner, 10 adds a 50 cent cigarette tax for government-run "early childhood development" programs. Liberal *L.A. Times* columnist George Skelton wrote that "10 is a big new government program — loosely defined with little central control" and that "clearly most" of the money "would be spent on programs that have nothing to do with smoking." If Prop. 10 eliminates smoking, will the 10-funded, government-run preschools also be abolished?

11: Local Sales and Use Taxes: Revenue Sharing: Ends a constitutional requirement that cities and counties may share sales and use tax revenues only with voter approval. Local governments compete to attract large retailers by offering favorable development regulation. Localities able to share the revenues retailers generate can form a cartel reducing this competition. Conservatives are on both sides: Assemblyman George Runner is 11's author; Tom McClintock opposed it in the Assembly.

— Francis Duclos

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onomic Democracy" days. The "CED" metamorphasized out of the Students for a Democratic Society (SDS) when SDS became too much of a hot button for average Americans. While Jordan's campaign is being run mainly on more current issues, there is a strain of backlash against Chesbro's Hayden connection still at work in parts of the district. Additionally, Chesbro is just too liberal for this district on some issues if the Jordan campaign succeeds in communicating that to the voters. There is a strong liberal, environmental element here, especially in the coastal areas, and Chesbro plays to that successfully. They will certainly come out to vote.

JORDAN'S TASK is to motivate the GOP base of about 35 percent, and convince enough of the "switch" Democrats, of which there are plenty, that Chesbro just doesn't belong. Of the three Senate districts in play, this is probably the toughest one for the GOP considering demographics alone, yet it contains what appears to be their most favorable candidate match-up.

To start the Assembly wrap-up we note that, like the Senate, all the "in play" seats are currently held by Democrats. Starting in San Diego, weakened Democrat incumbent Howard Wayne (78th A.D.) faces Dr. Jean Roesch for the GOP. Wayne is a freshman who received *less than* 50 percent of the vote in the June open primary. Roesch is a soft-spoken but persuasive candidate who fits this district well. Registration is just about even between the two parties, and the voters here are strong ticket-splitters.

L.A. County contains two additional Democrat at-risk district and one GOP blown opportunity. The lost opportunity comes in the Glendale/Burbank 43rd district seat whose lineage runs from Mike Antonovich to Pat Nolan to Jim Rogan. Republicans lost this seat to Democrat Scott Wildman two years ago by 83 votes because they failed miserably in candidate recruitment and background research on their own potential candidates. This year Wildman should have been a sitting duck. Once again though, candidate recruitment failed them. L.A. Police officer Peter Repovich was the early GOP choice to run, and the leadership cleared the primary field for him. Only after the primary was it revealed that Repovich had been suspended twice for sexual harassment charges, and once on charges of brutalizing a suspect in his custody. This seat is gone for now.

There is better news for Republicans in the neighboring 44th district centered in Pasadena and held by freshman Democrat Jack Scott. Republican Ken LeCorte is a strong, articulate, and politically savvy candidate with a compelling personal story for that district. Scott, however, also has more than his share of political acumen. Were the Democrat incumbents reversed, with Scott Wildman sitting here and Jack Scott in Glendale, LeCorte would be primed to win. But, as it is, the Wildman/Repovich fall-out has benefited LeCorte in the race for scarce Sacramento-based GOP dollars and resources. LeCorte's challenge is to reinvigorate a still large but dispirited and disorganized GOP base vote in the district. The Democrats will spend big to protect Scott. They see him as a real comer, though he received only 52 percent of the open primary vote. If the Republicans are to retake this seat, and stay competitive at all in what used to be a GOP bastion, they must do it this year.

Not far south of the Scott/LeCorte battle is 56th district centered in Downey and Norwalk. Phil Hawkins won this Assembly seat for the Republicans in 1994. In 1996 he ran unsuccessfully for the state Senate, allowing Democrat Sally Havice to recapture the district by a razor-thin margin. Hawkins is back this time and Havice is clearly on the ropes. She received only 46 percent of the total vote in the open primary, with Hawkins just a couple of points behind her. Havice is viewed by friend and foe alike as a weak campaigner and a weak legislator. She survives by virtue of union dollars and union organization. This has been plenty to keep other dim bulbs in office for years, and still might work for Havice. However, Hawkins is highly motivated and strongly funded. Labor is going all out to save the seat, but if the GOP doesn't pick up this one, it is not going to make any progress statewide in the Legislature.

THE LAST Assembly seat really "at risk" for the Democrats developed as something of a surprise after the primary election. The Fresno-based 31st district of former Speaker Cruz Bustamante would not normally be considered primary GOP turf. However, the Democrats nominated an exceptionally liberal woman, Sarah Reyes, who is 'way out of line with many of the conservative Democrats in this Central Valley area. The GOP standard is carried by local businessman David Jackson, who posted a strong showing in the open primary. Jackson has strong family ties to this district and has been a strong person-to-person campaigner. The Democrats would normally put this district in the "safe" category and go on to other things. They have recently rung all the fire bells and

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Rallying the Troops

Steve Frank's Lonely Crusade to take CRA national

By James Bemis

AT 7:00 A.M. on May 26, 1998, as he opened his morning paper, Steve Frank saw something he never expected to see: his face on the front page of the *Wall Street Journal*. Frank, who lives in Simi Valley, California, has spent the last 16 months traveling around the United States organizing fellow conservatives into the National Federation of Republican Assemblies (NFRA). The national group springs from the success of the California Republican Assembly, once headed by Frank. CRA is an official California Republican Party volunteer organization that remains steadfastly conservative.

Frank's efforts came to the *Wall Street Journal's* attention when reporter Jeanne Cummings heard about his organizing activities from South Dakota conservatives as she covered Republican presidential politics. Traveling from state to state, Cummings repeatedly ran into enthused activists lauding Frank's efforts to charter state NFRA chapters, teaching them how to recruit candidates, organize volunteers and raise campaign funds for conservative causes. Intrigued, she spent several hours interviewing Frank about his unusual quest, eventually producing the cover story. So, for one day at least, Simi Valley was the home of the nation's most prominently featured conservative.

Frank figures he's flown more than 200,000 miles to achieve his goal of establishing Republican Assemblies in every state. He's now launched organizations in 43 states and at least two more states are on the way.

On an average of two Friday nights a month, Frank, after working his regular job all week, kisses his wife Leslie good-bye, heading to LAX for a red-eye flight to Anywhere, U.S.A. On the plane, he reads or revises the next day's presentation. Arriving early Saturday morning between 7 and 9 a.m., he breakfasts with a small group of local conservative leaders. Frank then makes his main speech to a larger group, where he outlines the principles and goals of the NFRA, requesting their help in stemming the liberal tide. After lunching with another small group, he retreats to a hotel to make phone calls and catch up on paperwork. Following a dinner meeting with still more activists, he retires to his room, waking early to catch a morning flight back to Los Angeles. Most Sundays, he's home by 1 p.m., in time to greet his wife returning from church. For this, he receives no pay or stipends. NFRA pays only his travel expenses.

James Bemis is a columnist for the Los Angeles Daily News *and is writing a screenplay for a film based on the sixteenth-century English Reformation.*

STEVE FRANK, 51, was born in the Bronx, moving to Southern California at age 11 with his family. After attending local public schools and completing two years at L.A. City College, Frank joined the army, where his service included a tour of duty in Vietnam with the 1st Infantry Division — the legendary "Big Red One." After completing his military service, he graduated from the University of Redlands with a degree in Business.

Conservative politics first beckoned during the mid-1960s when he became active in supporting the troops still serving in Vietnam. With Bob Dornan, he developed the famous POW/MIA bracelets eventually worn by thousands as a reminder of those soldiers missing or imprisoned. He also became an active speaker at college campus forums, opposing Tom Hayden, Jane Fonda, and other radical activists regarding America's role in the Vietnam War. Later, he was asked by the families of POWs to negotiate on their behalf directly with the Viet Cong, North Vietnamese, and Khmer Rouge. He also served on the Proposition 13 speaker's bureau and was Ventura County coordinator for Propositions 187, 209, and 227. He's run twice unsuccessfully for political office.

In the late 1970s, Frank served as a California Re-

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publican Assembly statewide officer, and eventually as president. With 115 chapters and roughly 10,000 members, CRA is one of the state's most potent political organizations. Its annual convention served as launching pad for the gubernatorial campaigns of Ronald Reagan in 1966 and Ron Unz in 1994. Currently, according to CRA, its members dominate "the Republican Caucus leadership of both houses of the state Legislature."

CRA PROMOTES conservative candidates and causes through a vigorous grass roots network. Putting into practice its stated belief that "only small government truly serves the needs of the people," local CRA units have taken the lead on issues that might seem small potatoes to other groups, including fighting porn shops in Simi Valley, school bond taxes in Torrance, and public safety personnel reductions in Vallejo. While often overlooked by Party bigwigs and country club types, these local conflicts loom large in the lives of an important CRA constituency: the working rank and file in the affected communities, those whom Pat Buchanan calls "the conservatives of the heart." By making the hometown common folks' fight *its* fight, CRA has cultivated a geographically dispersed core of loyal, dedicated members: CRA's secret weapons.

By making common folks' fight *its* fight, CRA has cultivated a dispersed core of loyal, dedicated members.

In 1979, then-CRA president Mike Evans, a woman, and Frank came up with an idea. Given its effectiveness, CRA ought to work in other states. The seed of the National Federation of Republican Assemblies was sown. Frank and Evans found that no other state had organizations similar in scope to the CRA. While there were small pockets of local conservative groups with names like "The Main Street Republicans" and "The Republican Coffee Club," no organized, statewide conservative groups existed whose members understood how to acquire and use the apparatus of state and local political power. Clearly, they quickly realized, organizing these groups would entail spending lots of time and money on travel, meetings, communication, and more. The task seemed Herculean.

Nevertheless, by 1983, five states — Texas, Illinois, Vermont, Iowa, and Washington — had signed up. But just as things began to jell, Frank found the activist fever ebbing away, losing its vitality, strangely, because of conservative success. Reagan was president, the Senate was Republican, *National Review* was the toast of Washington. So, slowly, grass roots conservatives put away their muskets, hung up their uniforms, bid farewell to the officers, and went home. Only California maintained an active Republican Assembly organization.

And so it stayed until the 1992 Republican National Convention when delegates from Arizona approached CRA for help in forming their own Republican Assembly. The following May, Frank and Evans drove to Phoenix to charter the Arizona Republican Assembly. Hoping for the best but expecting the worst, they found an organized group of high-level conservatives, including Governor Evan Mecham, present to greet them. When they left, the number of Republican Assemblies in the United States had doubled. To two.

And the number remained two until December 1996. Angered by the Dole campaign's repeated stiffing of conservatives — who were "rolled, doled, and maligned" according to Frank — a meeting was scheduled in Las Vegas for the California and Arizona Republican Assemblies to discuss forming a national organization. Interest proved so high and the need so immediate that representatives from nine other states also showed up, including such nationally-known activists as Eagle Forum's Phyllis Schlafly and Michael Farris from the Home School Legal Defense Association.

The meeting elected Frank as National Coordinator, with the job of organizing assemblies in each state and finding and cultivating the leadership to make them grow. In August 1997, to no one's surprise, Frank was unanimously elected NFRA's first president. The organization sought and received endorsements from several nationally-known conservatives, including Schlafly, Pat Buchanan, Gary Bauer, Paul Weyrich, Tim LaHaye, and Morton Blackwell. The endorsements provided instant credibility. Also, these conservative leaders also gave Frank names to call in each state of people who knew the lay of the local political landscape.

Before going into a state, Frank reads local newspapers over the Internet and talks to local Republicans. Phone interviews are conducted with prospective chapter leaders to find committed conservatives who understand their state's politics and, more importantly, its political system. He often talks to a dozen people or more before finding the right combination of conviction, determination, and savvy.

Rapid improvements in technology have now made creating a national organization of Republican Assemblies, so daunting a task in 1979, manageable. Via the Internet, Frank reads several newspapers and hundreds of e-mail messages daily, sending a president's message or "issues update" to the membership several times a week. From his living room, he recently at-

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tended a NFRA technology subcommittee meeting with members from Michigan, Georgia, Tennessee, and other states using an online chat room.

The NFRA held its first national convention this year in Dallas from August 7 to 9, featuring presentations from such conservative luminaries as Missouri Senator John Ashcroft, Arizona Congressman Matt Salmon, former Texas Congressman Steve Stockman, Schlafly, and author David Barton. With more than 100 people attending from 20 states, the convention adopted principles, set objectives, established committees, and assigned responsibilities. The conference, says Frank, "moved NFRA to the next level."

The conference defined the organization's guiding principles and adopted basic operating rules. It pledged to seek divine guidance and blessing for the country and sharply criticized moral relativism. The group supports adherence to the Constitution, preservation of national sovereignty, maintenance of strong national defense, and a call for men-only in combat. It promotes religious freedom, property rights, the right to bear arms, economic freedom, parental rights, and the unborn's right to life. In short: a conservative manifesto. But many groups — even the state and national Republican Parties — have similar statements of principle. What makes CRA and NFRA different? Why do they succeed in maintaining and actually advancing their principles where others fail?

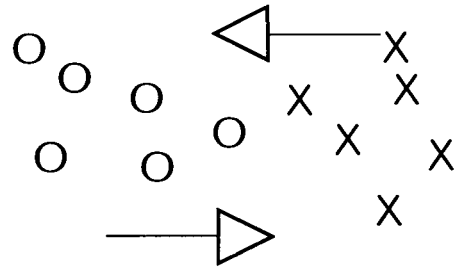
THE ANSWER lies in the NFRA's fundamental tenet "that all political power and influence should flow from the grass roots up." While all state Republican Assemblies subscribe to the same general principles, they're free to adopt organizational changes or emphasize or address specific issues as they choose. As Frank says, what's important in California may mean nothing in New York or Wyoming. One size can't fit all. Thus, each chapter delegates a certain limited amount of authority to the national organization, retaining broad autonomy for itself to deal with local and state issues. Sound familiar? It should. It's what used to be known in this country as "federalism." James Madison is smiling. The approach taken by the NFRA may represent the best opportunity yet for Middle American conservatives to re-take control from the liberals and socialists of both parties, first of their communities and then their country. Like a modern Baron von Steuben — who turned George Washington's raw Continental Army recruits into a well-trained army — Frank's job is to rally the troops, teach the fighting skills, lay out the roadmap to victory, and then leave the rest to the natives. "By getting people involved at the grass roots, statewide level," he says, "NFRA has already convinced many who are fed up with the Republican leadership in Washington to stay in the Party, which will help Republicans in these states in their local and state elections."

NFRA has already carved several notches on its belt. Both the *Wall Street Journal* and *Los Angeles Times* credit NFRA, working with social conservatives like James Dobson and Gary Bauer, with moving GOP leaders Trent Lott and Newt Gingrich in a more conservative direction. At the August Michigan Republican nominating convention, Governor John Engler urged the nomination of liberal Scott Romney — son of former Governor George Romney — for attorney general. But after a furious lobbying campaign led by Michigan Republican Assembly President Mark Forton and NFRA Board member Violet Vestevich, the GOP nomination went instead to the candidate backed by prolife groups, John Smietanka, on a close 52 to 48 percent vote.

In Arizona, ARA is collecting signatures in support of a tax limitation measure. An ARA-endorsed candidate, Barbara Blewster, won the September Republican primary for District 1 state representative — by *15 votes* out of more than 27,000 cast — following a vigorous Republican Assembly-led grass roots effort. Blewster's primary victory in this largely Republican district virtually assures her election in November. The *Prescott Valley Daily Courier* reported that losing GOP candidate David Spence blamed the ARA for his defeat, calling them "so far to the right it comes up left — it's really more fascist, a conspiracy theory organization." Hell hath no fury like a liberal scorned.

NFRA leaders plan to build on victories at the level of local school boards, city councils, county supervisors, and state elective offices as a foundation to take on what Frank calls the GOP's "power wing." They want its leadership to reflect a conservative majority drawn from what Frank calls the "Republican wing of the Republican Party." If it takes a while, so be it. Steve Frank's a patient man: "Yes, 1998 and 2000 are important to us, but we're not going home on January 1, 2001," he says. "We're planning to be around for many election cycles."

One of history's most successful grass roots organizers, Mao Tse-tung, said if you win the countryside, eventually the capital will fall. Steve Frank disagrees with Mao's politics; but he can't argue with his logic. CPR



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Smog Check Jungle

by Denis J. Norrington

IN THE 1998 legislative session's closing moments, the state Assembly dealt a death blow to repeal of that increasingly arcane and byzantine set of regulations called Smog Check II. That repeal passed in the Senate by a lopsided 21-9 vote, that Governor Pete Wilson dropped his planned intention to veto the repeal, and that Assembly Democrats had to resort to procedural subterfuge to keep the bill in the Transportation Committee through the end of session demonstrates the rapidly increasing frustration with and opposition to this vastly complex law affecting every Californian who owns a car.

Eight days after the end of the legislative session, new tighter testing rules kicked in, adding emissions examinations for nitrous oxides("NOX") to the tests in designated "High Smog Areas." It's hard to tell whether the Air Resources Board (ARB) bureaucrats deliberately delayed the introduction of Smog Check II's next stage until after the adjournment. However it certainly robbed the program's opponents of additional pressure to kill it.

Like a Stealth Bomber, unseen and unheard, this slowly ballooning set of regulations has snuck up on most Californians. State residents are accustomed to the far easier to understand and much less rigorous world of the original Smog Check. That program's first stage passed in 1947 in response to the then-choking clouds of auto emissions that identified Los Angeles and Southern California as the nation's bad air capital. Fifty years later, an *L.A. Times* editorial of November 11, 1997, proclaimed the unqualified success of the original Smog Check program, reminding its readers that, whereas 20 years earlier the South Coast had endured 121 "stage one" smog alerts, that year there had been just one, and that "the average New Car today creates only about 1/10th the pollution of its 1977 counterpart." Given this success, why was a vastly more rigorous set of rules required?

The roots of Smog Check II can be found in the 1990 Federal Clean Air Act. Passed by the Democrat Congress and signed by George Bush, it mandated that all states lower pollution levels still further from the already drastically reduced levels of the 1980s. States failing to undertake what the Feds judged "effective enough" efforts would lose federal highway funds. The Act, largely a child of the late '80s ozone scare, mandates that Los Angeles will have to reduce its already low pollution levels an additional 65 percent before 2010.

CALIFORNIA RESPONDED with Smog Check II, which Wilson signed into law in 1994. Under the new program, the state is divided into three areas: 1) rural areas of minimal or no pollution where cars are only smog tested upon resale; 2) "median" areas where the old program is essentially continued unchanged except for tightened-up standards for "older"(1984 and before) cars; 3) "smog enhanced" areas where tests for nitrous oxides ("NOX") are, as of September 8, 1998, added to much tougher standards. The third area includes the heavily-populated Southern California coastal areas, parts of western San Bernardino and Riverside Counties, and large areas of the urbanized sectors of the Central Valley, mainly Bakersfield, Fresno, and Sacramento. In the

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Valley, some borders between zones two and three form a complex maze, and car-owners living only a few blocks apart are subject to widely varying emissions standards. The densely-populated greater San Francisco Bay Area, in the meantime, is considered part of category two, perhaps reflecting the area's special political clout among the Legislature's dominant liberal Democrats.

The picture is further complicated by Smog Check II's provision requiring 15 percent of cars designated for "NOX" testing be placed on "dynamometers": treadmill-like devices that measure emissions with the car in motion. Cars are selected for this still more rigorous testing based on a so-called "high pollution emitter" profile drawn up from ARB and EPA data. The ostensible object is to identify so-called "gross polluting" vehicles defined by the "profile." ARB estimates 10 to 15 percent of the state's vehicles are such "gross polluters." Owners of such vehicles are in for it. Under provisions in effect since 1996, owners in all three test areas whose vehicles fail their initial test must, if they want to continue driving their cars, make what they hope are sufficient repairs and then go to special state-certified and operated retesting centers. The program began with only 48 such centers available for the entire state, creating a choking backlog of older car owners unable even to schedule a re-test over the jammed 800 telephone line.

A final element fueling anti-Smog Check II sentiment was a provision allowing state seizure of vehicles whose owners refused to comply with the new smog law. Opposition to the new law coalesced in a rally in Sacramento on August 22, 1996. Urged on by San Francisco's conservative KSFO radio political talk hosts, a crowd variously estimated to be anywhere from 1,000 to 10,000 assembled on the state Capitol steps carrying signs denouncing Smog Check II and shouting "Can you hear us now?" Assemblyman Larry Bowler (R-Elk Grove) told the cheering crowd that "When cars are outlawed, only outlaws will have cars!"

AFTER THIS, legislators called a temporary halt to the gradual expansion of regulations. They quickly drew up a series of modifications that became law the first of this year. However, these "modifications," instead of simplifying and mitigating the tough new test standards, made the process even more complex. A bill by Senator Quentin Kopp (I-San Francisco) stripped the language that called for the confiscation of cars that refused to abide by Smog Check II. It established a program to supplement the 48 state-run "test only" stations with privately-owned and staffed stations. But as of August, no service stations had yet been certified under this program. Other bills ex-

Oxy Morons

The Federal Clean Air Act of 1990 produced another byproduct, this one potentially far more dangerous and disruptive than mere tougher and more complex pollution laws. One of the goals mandated by this Act was cleaner burning gasoline. As part of this goal, Congress ordered the use of oxygenates in gasoline — the use of chemicals that add oxygen to gasoline ostensibly to help it burn more cleanly.

The two major categories of oxygenates are ethanol, made from corn and rice waste products, and M.T.B.E. ("methyl tertiary butyl ether"), a waste product of gasoline production costly for major oil companies to dispose of according to the requirements of other anti-pollution laws. Given the alternatives of paying Archer Danials Midland, ethanol's major corporate producer, to use its oxygenate, or using MTBE, turning a costly waste product into a valuable additive, the choice was easy. At the urging of the oil companies, in California the state Air Resources Board was given the right to place a prohibitively low cap on the percentage of ethanol that could be used in gasoline, thus eliminating MTBE's only competition among oxygenates.

Beginning in January of 1996, MTBE was added to all gasoline sold in California so that it comprised at least 11 percent of the gasoline mix. At the same time, MTBE's status as a carcinogen that did not dissolve in gasoline was overlooked. No one bothered to test MTBE to learn whether using it might create health hazards.

Soon danger indicators began to appear. Gasoline storage tanks normally leak in small quantities but that is not usually a significant problem because gasoline evaporates quickly. MTBE, however, does not.

(Continued on page 22)

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empted vehicles newer than 4 years old, or older than 25 years, and provided for some state funding for those who could not afford to get their cars repaired in order to pass Smog Check II.

This year, several proposed bills would have gutted Smog Check II, in some cases, for instance, by withholding ARB funds for administering the program. Both Democrat and Republican bills reflected the Parties' larger legislative priorities. A fight broke out, for instance, over the aid to low-income drivers provision with Democrats pushing a sort-of honor system "self-certification" of low income status while Republicans sought to decrease the drain on the state budget by requiring owners asking for the assistance to prove they qualified. As stated above, this year's attempts to end the program were eventually killed by Assembly Democrats.

DEMOCRAT RELUCTANCE to allow significant changes in Smog Check II might also reflect more than enthusiasm for super-clean air. A Sunnyvale-based company, Envirotest Systems, stands to reap huge financial benefits from the program's continued expansion. Envirotest's chairman and 31 percent owner is Chester Davenport, former member of Senator Alan Cranston's staff and Carter administration assistant secretary of Transportation. Envirotest holds an enormous stake in Smog Check II. Since 1993 the company has accumulated $53 million in losses and $356 million in debt, largely the result of buying land for test sites. But this year a deal Envirotest signed with Atlantic Richfield to build 80 test sites on its land is expected to produce $165 million in revenues. Envirotest stock, which began trading at $27.70 in 1994 and had sunk to $1.44 by summer 1997, rebounded to $12 by May of this year. The failure of its opponents to kill the program coupled with the introduction of additional "NOX" testing (Envirotest holds the patent for the program used in the test computers) pushed the company's stock price to $15.50 by September 10, 1998, despite the stock market's sharp drop since August. Envirotest has also developed an "open road smog sniffer": a device that catches cars smoking on the road and records their license numbers for mail warnings and ticketings. Chairman Davenport and Envirotest are in line to make more money if EPA or ARB (or both) add this gadget to their enforcement arsenal. Are Assembly Democrats directly connected to Envirotest? Who knows? But it is plain the ideological and profit motives of both are served by the increasing costs and regulatory burdens borne by ordinary citizens entangled in the jungle of new smog check regulation. **CPR**

Oxy Morons *(Continued from page 21)*

As early as mid-1996, Santa Monica had to shut down half its drinking water wells because of MTBE pollution resulting from gasoline tank leakage. Other water districts began to report problems with abnormally high levels of MTBE in their water supplies. California state Senator Richard Mountjoy informed the Legislature that a UC Davis study found MTBE present in "significant amounts" in Lake Tahoe, Donner Lake, Lake Shasta, Lake Merced (San Francisco) and other lakes and reservoirs. The study blamed leaking from tanks at more than 10,000 gasoline storage sites in California.

The town of Grenville, California, 35 miles east of Bakersfield in an area of excessive MTBE pollution, began reporting an outbreak of severe health problems. Abnormally high rates of cancer, lupus, AIDS-like thyroid abnormalities, and extensive amounts of a severe poison oak type rash appeared suddenly. Studies by two UCLA medical professors, one a clinical toxicologist and the other a neurologist, conclusively linked MTBE to kidney, liver and testicular cancer, AIDS-like thyroid immune system distruction, and sometimes "extensive" neurological damage.

While the results of these studies were reported to the Legislature, additional studies found that MTBE: 1) reduces gas mileage in direct proportion to its percentage use in gasoline (currently 13 to 18 percent); 2) damages car engines; 3) actually increases formaldehyde and "NOX" emissions; and 4) adds at least 14 to 16 cents per gallon to the cost of gasoline. Furthermore it was found that gasoline can be made to burn more cleanly without oxygenates.

Despite all this, so far nothing has been done even to reduce, much less end, the use of MTBE in gasoline. The one-time "waste" product with high disposal costs has become a $3 billion California industry, creating strong financial pressure to continue its use. Ironically, the same Federal Clean Air Act that mandated more cleanly burning fuels included an extensive list of pollutants, one of which was MTBE. *— Denis J. Norrington*

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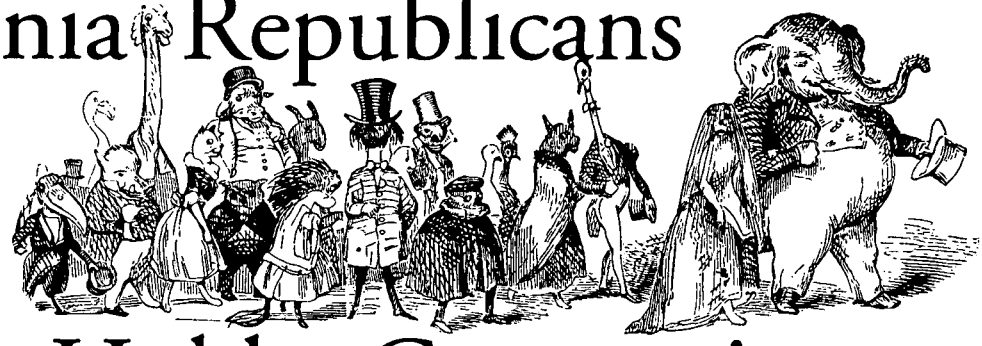
California Republicans Hold a Convention



by John Kurzweil

SHORTLY AFTER Pete Wilson was elected to his first gubernatorial term on a platform of liberalism on social issues and conservatism on state finance, the new governor defined himself by forcing through the largest state tax increase in American history and vetoing a "gay rights" bill. GOP gubernatorial nominee Dan Lungren has now similarly defined himself, after years of speaking out as a pro-life, pro-family, and pro-judicial restraint conservative, by providing indispensable aid to the retention campaign of California's most powerful, and one of its most extreme, pro-abortion politicians and activist judges: state Supreme Court Chief Justice Ronald M. George. (Lungren didn't bother awaiting the formality of election to governor. If he loses to Gray Davis, his chance would have been gone.) Thus, with a mighty assist from George Bush and Bob Dole, have Republican standard bearers, within 10 years of Ronald Reagan's departure, fixed firmly on the Grand Old Party a public image of untrustworthyness and unprincipled opportunism rivaling Bill Clinton's own.

Gathering in Long Beach

For those unfamiliar with the proceedings at CRP's September gathering, I quote a brief report of them from one of *California Political Review*'s sister publications, *California Court Watch* (the September 30 issue) headlined: "Lungren assured George/Chin Republican convention victory.

"While Saturday's [September 26] *Sacramento Bee* was reporting that Attorney General Dan Lungren will not support retention of state Supreme Court Chief Justice Ron George and Justice Ming Chin, the GOP gubernatorial nominee was quietly handing both controversial judges a final victory over perhaps the state's only politically potent force capable of endangering their retentions.

"As last weekend's state GOP convention prepared to vote on a proposal to oppose George and Chin, Lungren's operatives refused to put down an effort, led by Gov. Pete Wilson (who has endorsed both justices), to derail the vote. The anti-George/Chin forces showed they held the convention majority by handily winning an early floor vote to move the judges question to the top of the agenda. But before the judge vote could take place, the losing George/Chin supporters fled the meeting, denying it a quorum, and forcing adjournment. Business then moved to a meeting of the Party's executive committee, a second quorum-ending walkout occurred, and the convention closed without action on the judges.

"Observers agreed that Party standard-bearer Lungren could have forestalled either walk-out, had he tried. 'If he could not, he's more lame duck than Wilson,' said a long-time GOP activist. CRP Chairman Michael Schroeder, who would certainly have had to follow Lungren's direction, instead played a key role in derailing the convention. He thus culminated a year of publicly calling for a careful judicial evaluation, while privately acting to sabotage the Party's committee and deny a vote on the judges.

"Schroeder initially suggested formation of a CRP Judicial Evaluations Committee, critics charge, as a delaying tactic when calls for an anti-George/Chin resolution began surfacing a year ago. Schroeder originally said the committee was needed to gather information for Party members on the justices' full records. But last June, Schroeder tried to stop a public

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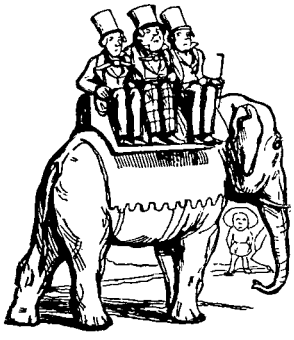
hearing co-sponsored by JEC Chairman Senator Ray Haynes that was intended to jump-start the stalled information-gathering work of the committee.

"When the June hearing was held anyway, forcing Schroeder's hand, he moved to stack the Committee with pro-George/Chin members who eventually voted to delete from its final report all the information the Committee had amassed on the judges. Their 'report' provided the Party only an unsupported recommendation that George and Chin be endorsed. The Wilson-backed walk-out stopped the full CRP convention from opposing the justices by amending this 'report.' Schroeder made possible the second, executive committee walk-out by restructuring that committee over the weekend, again stacking it so it would not reflect the Party majority position. Lungren refused to stop any of Schroeder's machinations.

"'Lungren may never be governor, but he, or Schroeder, will surely win hypocrite-in-chief,' said John Kurzweil, president of The California Public Policy Foundation which publishes *California Court Watch*. 'In his craven fear of losing the election,' Kurzweil said, 'Lungren has become his own worst enemy. He believes in rule of law and the prolife cause, but finds himself giving indispensable aid to the state's most powerful, and one of its most extreme, pro-abortion politicians and activist judges. It's 'High Noon,' but Lungren's no Gary Cooper; he's joined the whining townsfolk afraid to defend their own homes and supposedly cherished beliefs.'"

Under the circumstances, I was not surprised, recently, by a fund-raising letter that arrived from California Republican Party Chairman Michael Schroeder. "When you and I choose our political leaders," Schroeder wanted to know, "does strong moral character and integrity count? YES or NO?" This missive came within days of the conclusion of the September convention, so I knew that when, answering his own question a few sentences later, Schroeder said yes, he meant no. Perhaps, in keeping with the Party's now-almighty Wilsonian spirit, we should all answer Schroeder's plea pledging mega-bucks but somehow neglecting to enclose a check.



In a last ditch effort to hold the sort of "Lincoln/Douglas" debate Dan Lungren once said he favored (back when he was also promising to resurrect the GOP's noble tradition of Grass Roots politics), I tried to arrange an honest exchange of views on George and Chin before the Party rank-and-file at a Saturday meeting during the convention sponsored by Senator Haynes and the Judicial Evaluations Committee. The Senator said great. Schroeder offered him a 2 p.m. Friday slot for the meeting — a time when no one: no press, no Party members, not even Haynes, could attend. In the meantime, I asked Kern County District Attorney Ed Jagels and San Francisco lawyer Larry Callaghan — both members of Haynes' committee — to appear to defend the justices. Both, ahem, were sorry but tough time constraints would keep them away more or less no matter when the debate was scheduled. Later both attended the convention, appearing on Saturday and staying through the whole long Sunday floor and executive sessions.

Undaunted, I prepared my half of the debate on the question: how should the CRP evaluate George and Chin? I delivered it on Saturday to a sparse crowd in another hotel — a 10-minute walk away: Schroeder had arranged that no rooms would be available at the convention hotel lest someone hear why most Republicans attending would the next day vote to support my position. This is what I said:

The Undebatable Issue

LAST SPRING reporters asked Governor Pete Wilson about growing Republican opposition to Chief Justice Ron George and Justice Ming Chin. Wilson said judges should not be opposed if they "accurately and carefully and fairly apply the law." Since then, the organization I head, The California Public Policy Foundation, has been trying to take Wilson's hint and set up a debate on this critical question: have the Chief Justice and Justice Chin served the law during their terms on the Court? Remember: they are asking voters to give them 12 more years on the bench.

Those who say they have not served the law, myself among them, were quick to agree to debate. Those supporting the justices were not. They greeted our efforts to open dialogue with a stonewall — a stonewall of Clintonesque solidity and scorn. But former Governor George Deukmejian, to his credit, wrote a rejoinder to the charges conservatives have leveled against the Chief Justice. It appeared in *California Political Review's* July/August 1998 issue, copies of which are available at the back of this room. Deukmejian is co-chairing George's campaign, with Senator Dianne Feinstein.

But still no one will agree to *debate* for George and/or Chin before a live group of Republicans, so please read Governor Deukmejian's article for *their* side of the controversy.

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In the meantime, because I believe Republicans deserve better than to be dismissed like children, I intend, here and now, briefly to defend my belief that neither George nor Chin, but especially George, fit Wilson's definition of an honorable judge — one that "accurately and carefully and fairly applies the law." Later — during the question and answer period — audience members may rebut what I say. [No one asked to do so.]

The George/Chin defense, articulated by Pete Wilson, is: don't blame the messenger. If you don't like the law, complain to the lawmakers, not us. This is how they dispose of *American Academy of Pediatrics v. Lungren*, a George decision holding that a law requiring government to protect the confidential information it gathers about its citizens somehow bans another law requiring a parent's or judge's consent before a minor may undergo one — and one only — medical procedure: abortion. It's still fine under the constitution to require parental consent for virtually *any other* matter, great or small, but not this.

Dividing Republicans is exactly what liberal judicial activists have been doing in this election.

And this is how they also dispose of a series of George-supported anti-property rights decisions. These decisions defy repeated U.S. Supreme Court rulings that when government forces land owners to spend years of time in court, paying huge legal bills, before it respects their property rights, the Bill of Rights' Fifth Amendment requires the owners be compensated.

"Don't blame the messenger," the Justices' defenders say, when it is pointed out that George and Chin are creating new grounds for *non*-contract employees who lose their jobs to file anti-employer "tort" lawsuits. Following a Rose Bird tradition, this directly contradicts the Legislature's specific decision to limit such "wrongful termination" suits to cases involving written contracts.

Now it is true that Ron George refused to misapply California's Unruh Civil Rights Act to the Boy Scouts. But this was a bow to election year politics. Read the fine print in George's Boy Scout opinions. You will find there that he cynically sustained an old Bird Court decision *mis*-applying Unruh to Boys Clubs and an old *Ron George* decision *mis*-applying it to private golf clubs. Presumably, Wilson would tell us to take *this* complaint to the lawmakers as well. But it was our *lawmakers* in the Legislature who specifically amended the Unruh act to limit its application to *business* establishments.

The "don't-blame-the-messenger" argument places the burden of proof on the justices and their supporters to prove the law *required* them to rule as they did — that they enjoyed no "wiggle room," to borrow a phrase from Lyn Nofziger. When they insist we critics show that the law irrefutably means what we say it does, they contradict their own position. *They* are the ones claiming the law *made* them do it, and that complaining to the judge shows we just don't know how the law works. All right then, consider the words of their own fellow members of the Court:

Former Justice Frank Richardson called the Bird Court's 1981 *Myers* decision, holding that the state constitution's *privacy* provision requires taxpayer-funded abortions, "a speculative jump in reasoning of Olympian proportions .... [a] pure invention of the majority and not constitutionally ordained by any California 'right of privacy'." I interviewed Ron George in 1996. He called *Myers* the "binding precedent" underlying *American Academy.*

Justice Janice Brown wrote that George's and Chin's *American Academy* opinion showed "an utter lack of deference ... to state precedent, to federal precedent, to the collective judgment of our Legislature, and, ultimately to the people we serve." Ronald Reagan's close friend and Supreme Court appointee, William Clark, wrote that, in *American Academy*, the judges were "clearly substituting their own moral judgment for that of the people."

Was Ron George forced by the law to *sustain* Rose Bird's old anti-Boys Clubs decision? Justice Stanley Mosk ridiculed the idea, writing that George's Boy Scout opinions "apparently have as their object to salvage [the Bird and George precedents] at any cost."

On creating new "wrongful termination" lawsuits, Justice Brown wrote that George and Chin had granted "courts unfettered discretion to mistake their own predilections for public policy."

So let us drop the groundless pretense that *the law* forced these left-wing political majority opinions. Plainly Ron George and, to a lesser extent, Ming Chin have made choices on their own, *not* dictated by law, to minimize and to undermine parental rights, the rights of employers and business owners, property rights, First Amendment associational and religious freedom rights, and above all the right of every American to equal treatment before the bar of justice.

They are by no rational measure either strict constructionists or conservatives. Do they pass Pete Wil-

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son's "fairly applying the law" test? On the contrary, as Justices Richardson, Brown, and Clark attest, they are politicians in black robes: liberal judicial activists.

But I suppose some will object that I have not answered the main argument put forward to leave off telling the truth about George and Chin: that it will divide Republicans when we must unite to elect Dan Lungren. This is naive. The way to divide a unified army is to peel off its soldiers from their allegiance to the essential cause that brought the army together in the first place. You do it by bribery; by offering a payoff of some sort, appealing to the particular or special interests of individual soldiers or individual units — in exchange for their betraying the great cause they share with the full force.

Dividing Republicans is exactly what liberal judicial activists have been doing in this election:

- offering "pro-choice" Republicans decisions that they favor on abortion;
- offering law enforcement what George and Chin know it would be suicidal to try to hold back, support of the death penalty;
- offering to relieve the embarrassment of ambitious politicians whose career plans might be complicated if they had to acknowledge that they made a mistake in trusting Ron George.

And offering many other things, large and small, all in return for winking at this Court's ferocious assault on our bedrock principle: rule of law.

Our Party *is* divided — because Ron George and Ming Chin have divided it. The path to unity is to expel their destructive, divisive influence.

Rule of Law is a bedrock cause of the Republican Party because it is a bedrock cause of the American Republic. Without honest judges, there is no limited government, no true democracy, no private property, no Bill of Rights, no protection against ruinous taxes and none against tyrannous officials. Your work to elect candidates is wasted, as corrupt judges will rewrite the laws they pass without regard to the voters' mandate. This is why the left works so hard to corrupt our judiciary. It is why we must work just as hard to sustain its integrity.

Republicans' ultimate bedrock cause is freedom. Alexander Solzhenitsyn, a man who knows what freedom is and what it is to lose it, wrote of Soviet tyranny that "over and above its physical and economic constraints, it demands of us total surrender of our souls, continuous and active participation in the general, conscious lie .... that is a sacrifice we dare not make! The most important part of our freedom, inner freedom, is always subject to our will. If we surrender it to corruption, we do not deserve to be called human."

As Republicans, today and tomorrow, we are being asked to embrace a series of lies:

The lie that the law says parents have no right to raise their children;

The lie that judges may ignore the Bill of Rights when they please and that property owners are chattel for petty Coastal Commission dictators to order about to suit their purposes;

The lie that employers are liable for huge cash judgments for the crime of once having offered a job and then later no longer offering it;

The lie that our justice system should serve the socialist aim of redistributing wealth from those who have earned it to those who have not;

The lie that this election is about just "one bad decision";

The lie that Ron George or Ming Chin are conservatives; and

The lie that Republicans are too cowardly to stand up for what they believe.

The most important part of our freedom, inner freedom, is always subject to our will. Refuse to participate in these lies. Thank you.

An Embarrassing Assemblage

AFTER THE convention, I received a communication from an old friend who said I'd been naive, that the Party had followed a wise course. My friend forwarded a column for my consideration by Sherry Bebitch Jeffe, Den Mother to California political reporters, to borrow *CPR* media correspondent Tim Ferguson's phrase. Jeffe is an ever-flowing font of conventional liberal wisdom. Her columns, including this one, are written in the standard, aloof "handicapping" style favored by television's and radio's respectable talking heads. The analytical tone is meant to remind us of a thoughtful scientist patiently explaining "facts," as opposed to mere opinions, to unruly students. "Remember 1992?" Jeffe commences. "Women, angered by the U.S. Senate's handling of Anita F. Hill's testimony during Clarence Thomas' confirmation hearings and afraid the Supreme Court would strike at abortion rights, stormed the ballot box." You see? And you thought Bob Dole had something to do with it. Jeffe explains that the one thing Dan Lungren and Matt Fong must not do is mention abortion, lest they bury themselves under an avalanche of votes cast by millions of apparently still angry women. My friend implicitly equated any talk of Ron George with waving the red abortion flag in front of Jeffe's Storming Legions, and so the conclusion was plain: George gets a

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free pass to do as he pleases; we dare not say a word about him. In short, we are to approach voters like zoo animals, ignoring their rational faculties and careful only to consider what the experts tell us they like to hear, see, and taste. It is a coward's strategy, dishonest and pathetic. The wonder is how on earth the timid souls who support it think they are at all qualified to lead. I answered my friend as follows, omitting personal references:

Dear _____:

I have read the Sherry Bebitch Jeffe column you sent me. It's too bad you weren't in the Pacific during World War II. You could have advised McArthur and Halsey, basing your "intelligence" on the broadcasts of Tokyo Rose. Does it occur to you that one reason people like Jeffe write and are published is psychological warfare? That just maybe they aren't interested so much in an honest search for truth as in making Westside liberals feel good about themselves by reminding them that all "right thinking" people agree with them and, at the same time, demoralizing the enemy — you and me? This is the same nonsense we were told to prove that the only candidate intelligent Republicans could possibly back for Senate was Susan Golding.

The trouble with playing this game of let's fool the voters, not letting on what we really think, but telling them what the focus groups say they want to hear, is that soon we begin to believe the lies that become our stock-in-trade. The issue with Ron George is not abortion. It is judicial lawlessness, which almost no one supports, and a law buttressing parents' rights and responsibilities that is consistently backed by landslide majorities of Californians, including Pete Wilson and the co-chairman of George's own campaign. Also now, because of the unfathomable stupidity with which Republicans have handled it, it has become an issue of leadership. You worry about our Party being made to look foolish. I say your strategy has made us look — because evidently it is what we are — confused, duplicitous, cowardly, and divided, and not divided as honorable men might be over our rational disagreement about principle and how to apply it, but divided by fear, as is a collapsing army that's lost faith in its cause and suffers defections by first one company and then another as they turn and run from the field. No one will vote to be led by such an embarrassing assemblage as that.

You say you are relieved that post-convention newspapers did not make us "look foolish" by talking about "fetus dolls being thrown in the air." Do you really think the sort of honorable, responsible debate featuring, say, Gideon Kanner [author of "California Justices' War on Private Property Rights," *CPR*, September/October] and Mark Pulliam against a Sean Walsh [Governor Wilson's press secretary who declined invitations to deabte] or Larry Callaghan or you, preceding a vote by the Party could fairly be described that way? Few if any [political reporters] would have reacted to such an intellectually honest debate and CRP vote as you seem to think they would have.

DURING THE more than 10 years that I have been attending state conventions, the press has come and gone, routinely thinking them empty demonstrations of rhetoric without substance. The only exceptions I can recall were in 1992 when Jim Dignan staged a series of debates involving GOP Senatorial candidates Bruce Herschensohn, Tom Campbell, and Sonny Bono. The rooms were packed, the excitement was palpable, something important — as opposed to what happens in a speech by Pete Wilson — was occurring. One of the most cynical of the press warhorses, John Balzar of the *Los Angeles Times*, told me about one of those debates that it was the best event he had ever covered at any state convention. It had genuine substance, as even the cynics could see.

I have devoted more than a decade to the proposition that the only wise or honorable strategy our Party and our movement can adopt as its centerpiece is thoughtful, honest debate over issues. The truth is our strength, our only real strength, and, in any event we must stand with it, win or lose, or sacrifice our honor. I would not let Jeffe be my guide because, first of all, I think she is a liar. If I abandon my own reason for being on the battlefield, the outcome, whether or not I prevail, is defeat. It is futility. How could it be otherwise?

The same applies to any partnership Republicans propose to make with the people of California. If our true position is so at odds with the voters' preferences that the only way we can win their votes is to disguise where we stand (a premise I don't accept, except here for the sake of this argument), then the election is a futility and our role in it is a fraud. The partnership will collapse as soon as, whether before or after the voting, we try to move toward our real objectives.

Of course, the same fearful unwillingness to risk

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the peoples' disapproval will operate after the election, and a Governor Lungren would find it no more possible to be honest about his ideas or objectives, or to pursue them honestly, than before the election, for practical political reasons. Actually, I think the voters have already seen through the farce, and will reject Lungren as a would-be leader foolish enough to think he can lead with no mandate to an unstated objective (he actually told George Skelton that the election has no strong issues!) We now have the preposterous spectacle of Lungren calling for a "Rally of the Grass Roots" featuring — Pete Wilson! The campaign, driven by fear and having jettisoned the truth, descends from pointlessness to being simply ridiculous.

You say I have become "single issue" driven. I say that is what has gripped our Party and its candidate: in your headlong fear of losing this particular election, you are throwing overboard every competing interest and consideration, including the interest of honesty. Your devotion to your single issue leaves you unmoved while the enemy sweeps away whole provinces of our territory without our side firing a shot. Make no mistake: Ron George's retention with the tacit support of our Party and the enthusiastic support of the Democrats ends what little force remained in California for the bedrock principle of rule of law. My advice is that you struggle to peer beyond your single issue fixation on Dan Lungren. Try to see the overall direction of the war. It is not good. That overall direction is my "single issue"; by comparison, yours, because serving it as you say we should undermines our position in the larger war, is no issue at all. [Signed]

HOW DOES a Party at least 90 percent of whose members favor parental consent, strong families, and rule of law come to be utterly dominated by men (and women, but mostly men) either indifferent or overtly hostile not only to all three bedrock positions but also to their responsibilities as leaders to keep faith with those who have trusted them? "Leaders" who heedlessly overthrow, without a backward glance (to borrow a phrase from Justice Janice Rogers Brown), their responsibility to represent their followers honestly or, if in conscience they cannot do so, to say so and step down? I leave it, for now, to readers to answer that as they will. I only add that such a Party is not long for this world. CPR

Shelton

(Continued from page 16)

waved all the red flags. Jackson has them scared, because the Democrat nominee has many Democrat voters scared. Once a long shot, this is now do-able. It would be political grand larceny if the GOP pulls it out.

So there you have the arithmetic. Nearly all 37 current GOP seats are secure (again, with the always "watch" sign on Jim Morrissey in Santa Ana and Robert Prenter in Fresno). The one exception is Firestone's Santa Barbara seat, where Chris Mitchum is running a strong race. Four Democrat seats are in the balance, with at least one other "surprise" being actively worked by the GOP. A clean sweep is unlikely in most cases, but the lesson of the past two elections is just the opposite. The '94 Republican majority rested on 20,000 votes spread over a handful of districts. The '96 Democrat resurgence was even narrower: less than 1,000 votes spread over 3 districts put the Democrats over the top.

Which brings us to the closing, decisive topics: turnout and money. The Democrats will spend more money — quite a bit more — than the Republicans. That is a given. Whether it does them any good this year is the question. Democrat money will insure that their candidates have plenty of slick mail and electronic advertising. It will insure that target Democrat households get multiple messages on the importance of voting. What it cannot insure is that its target audience is listening this year. Turnout will be everything. Based on the narrow margins of 1994 and 1996 in deciding the majority in the Assembly, it would appear that any significant downturn in Democrat turnout would spell doom for their legislative candidates. Gray Davis and the rest of the statewide ticket might well be able to survive a Democrat dip of 3 to 5 percent. That is not true of the down-ticket races.

The GOP majority in 1994 was achieved during an off-year cycle, while the Democrats' rebound was helped by the presidential year bump. It would appear that no matter what else occurs, the turnout this year will be much closer to 1994 than 1996. Of course, we are talking just numbers of voters, not the all important "who" those voters are in the reduced turnout. The GOP appears to have a well-planned and unique get-out-the-vote effort. If they execute it successfully, they will probably be rewarded with legislative gains. And if just a few things fall right for them, election evening could be very productive.

With the caveat that this is written two weeks before the election, these are my best thoughts. I never underestimate Republicans' ability to snatch defeat from victory or of the Democrat apparatus to turn voters' logic on its head. As of two weeks out however, signs would appear to point to at least some increase in Republican numbers in both Assembly and Senate. CPR

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A Right OF THE PEOPLE...

....the Second Amendment, like the First, Fourth, and Ninth, secures an *individual* right.

Eugene Volokh

Dear Mr. Chairman And Members of The Committee:

Eight years ago, I got into an argument with a non-lawyer acquaintance about the Second Amendment. The Amendment, this person fervently announced, clearly protects an individual right. Not so, I argued to him, thinking him to be something of a blowhard and even a bit of a kook.

Three years ago, I discovered, to my surprise and mild chagrin, that this supposed kook was entirely right. In preparing to teach a law school seminar on firearms regulation (one of the only about half a dozen such classes that I know of at U.S. law schools), I found that the historical evidence overwhelmingly points to one and only one conclusion: The Second Amendment does indeed secure an individual right to keep and bear arms.

Text of the Amendment Refers to an Individual Right

The Second Amendment, like the First, Fourth, and Ninth Amendments, refers to a "right of the people," not a right of the states or a right of the National Guard. The First Amendment guarantees the people's right to assemble; the Fourth Amendment protects the people's right to be free from unreasonable searches and seizures; the Ninth Amendment refers to the people's unenumerated rights. These rights are clearly individual — they protect "the right of the people" by protecting the right of each person. This strongly suggests that the similarly-worded Second Amendment likewise secures an individual right. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC3* for text of the relevant original sources.)

What about the seemingly odd two-clause construction, which some commentators have called "unusual," "special," and "nearly unique"? It turns out that there's nothing odd about it at all. During the Framing Era, dozens of individual rights provisions in state constitutions were structured the same way, providing a justification clause explaining the right, and then an operative clause securing the right. The 1842 Rhode Island Constitution's Free Press Clause, for instance, reads

> The liberty of the press being essential to the security of freedom in a state, any person may publish his sentiments of any subject, being responsible for the abuse of that liberty ....

Just as with the Second Amendment, the second clause secures a right, while the first justifies it to the public. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC4)*

And the two clauses of the Amendment are entirely consistent. The second clause guarantees a "right of the people," which is the right of each individual. The first clause explains that this right helps further a "well-regulated militia," a legal term of art that means "the body of the people capable of bearing arms" (here I

UCLA Law School Professor Eugene Volokh teaches and writes about constitutional and firearms regulation law. This article is adapted from his testimony before the U.S. Senate Judiciary Committee's Subcommittee on the Constitution, September 23, 1998. It appeared in "Center-Right," a "free weeklyish e-newsletter of centrist, conservative, and libertarian ideas." Web site: http://www.center-right.org/. Footnotes, omitted in this version, can be found at: http://www.law.ucla.edu/faculty/volokh/beararms/testimon.ssi

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quote from the New York Ratifying Convention's proposal that eventually became the Second Amendment) — the entire armed citizenry, not some small National Guard-type unit.

The current Militia Act, enacted in 1956 and derived from the original 1792 Militia Act, defines the "militia" as including all able-bodied male citizens from 17 to 45; given the Court's sex equality jurisprudence, I feel comfortable saying that every able-bodied citizen from age 17 to 45, male or female, is a member of the militia. This is quite consistent with the second clause's securing an individual right to every person. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC2* and *www.law.ucla.edu/faculty/volokh2amteach /sources. htm#TOC32)*

These commentators agree that private firearms ownership was meant as a deterrent to government tyranny.

Contemporaneous Constitutions & Commentaries Unanimously Treat the Right as an Individual Right

Contemporaneous evidence from the late 1700s and 1800s unanimously supports the individual rights reading of the text. It's widely agreed that the Second Amendment right to keep and bear arms was an expanded version of a similar right in the 1688 English Bill of Rights. England, of course, didn't have states, so the English right couldn't have been a states' right; Sir William Blackstone, whose 1765 *Commentaries* were tremendously influential in Revolutionary Era America, described the right as a "right of the subject," an obviously individual rights characterization. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC6)*

Many early state Bills of Rights also protected the right to keep and bear arms; since these rights were protections *against* state governments, they surely must have protected individuals, not the states themselves. And many of the constitutions made this quite explicit. The 1790 Pennsylvania and the 1792 Kentucky Constitutions described the right as "the right of the citizens"; "the freemen"; the 1817 Mississippi, 1818 Connecticut, 1819 Maine, and 1819 Alabama Constitution specifically referred to the right of "every citizen."

The 1776 Pennsylvania, 1777 Vermont, 1802 Ohio, 1816 Indiana, and 1820 Missouri constitutions spoke of "the people['s] right to bear arms for the defence of themselves," referring to the people individually ("themselves") rather than collectively ("itself"). Throughout the 1800s, these unambiguously individual rights were seen as directly analogous to the Second Amendment. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC1)*

The same goes for all the notable constitutional commentators of the 1800s. George Tucker (1803) treated the Second Amendment right as equivalent to Blackstone's "right of the subject"; William Rawle (1829) did likewise. Justice Joseph Story (1833 and 1840) called it a "right of the citizens." Thomas Cooley (1880 and 1898) took exactly the same individual right view; so did the 1866 Freedmen's Bureau Act, which specifically secured to "all the citizens" "the constitutional right to bear arms" as part of their "personal liberty." A recent exhaustive study reveals that there was exactly *one* statement in the 1800s cases or commentaries supporting the collective rights view, a concurring opinion in an 1842 Arkansas state court case. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC7* and following.)

These commentators also make clear exactly what purpose the right was thought to serve: Blackstone, Tucker, Story, and Cooley unanimously agree that private firearms ownership was meant as a deterrent to government tyranny. In the words of Justice Story,

> The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

A CHILLING THOUGHT, perhaps, and one that may not be in keeping with the temper of our times — but the Framers thought that leaving governments (state or federal) with a monopoly on armed power was an even more chilling prospect. Though the Second Amendment grants no right to revolt with impunity against tyranny (no constitution can do that), it does secure private ownership of firearms as a deterrent to such tyranny; this is the unanimous judgment of all the early sources. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC8* and *www.law.ucla.edu/faculty/volokh/beararms/FED*

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The U.S. Supreme Court Cases Do Not Treat the Right as a Collective Right

The U.S. Supreme Court has said little about the Second Amendment, but it has certainly not said that the Amendment secures only a collective right.

Throughout the Court's history, the justices have mentioned the Second Amendment, usually in passing, in 27 opinions. In 22 of these 27, the justices quoted or paraphrased only "the right of the people to keep and bear arms" language, without even mentioning the Militia Clause. (See *www.law.ucla.edu/faculty/volokh/beararms/testimon.ssi#TOC.VI.D)*

One of the remaining five cases — and the only extended 20th-century discussion of the right — is *United States v. Miller* (1939), which held that the right extended only to weapons that were rationally related to the preservation of the militia. But the Court emphatically did not hold that the right belonged only to the state or the National Guard. Rather, it reaffirmed that the "militia" referred to the entire armed citizenry, and considered on the merits a lawsuit that was brought by an individual (Miller), not by a state. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC11)*

THE ONLY Supreme Court case that leans in the collective rights direction is *Lewis v. United States* (1980), which summarily rejected an ex-felon's claim of a right to possess a firearm, in passing citing some lower court cases that took a collective rights view. But *Lewis* could equally well be explained as concluding only that *ex-felons* don't have a right to keep and bear arms (something that's also been held in the many states whose constitutions unambiguously guarantee an individual right to keep and bear arms). (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm#TOC27)*

In any event, if one relies on passing mentions, *Casey v. Planned Parenthood* (1992) (quoting Justice Harlan) in passing described liberty as including "[freedom from] the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on" — a description that treats the right to keep and bear arms as an individual right on par with the other individual rights. (See *www.law.ucla.edu/faculty/volokh/2amteach/sources.htm# TOC29)*

Despite all the above evidence, the federal courts of appeal have unanimously subscribed to the states' right approach, though there are a few recent hints to the contrary in some opinions. If the historical or textual evidence were in equipoise, and if the cases dealt carefully with the evidence and explained why the pro-states'-right evidence was more persuasive than the pro-individual-right evidence, then perhaps we might defer to these courts' views.

But when the lower courts' decisions are contrary to the unanimous weight of the evidence, and do not really confront this evidence but rely almost entirely on bald assertions or on citations to other lower court decisions, it seems to me that we must respectfully say that the lower courts are mistaken.

The Precise Scope of the Right Is a Matter of Considerable Debate

While the evidence that the right is an individual right is extremely strong, the precise scope of the right is a matter of considerable debate. This of course is true of all individual rights: Everyone agrees that the First Amendment, the Fourth Amendment, and other provisions secure individual rights, but reasonable minds differ on exactly what speech the First Amendment protects and exactly what searches the Fourth Amendment prohibits.

Thus, recognizing that the Second Amendment secures an individual right tells us little about most moderate gun controls, for instance background checks, waiting periods, or modest restrictions on the kinds of brands that may be marketed. I don't know how these laws should be treated; I suspect that many would be upheld, like many modest speech restrictions are upheld despite the existence of the First Amendment.

But our concern about these problems can't blind us to the clear verdict of the constitutional text and the constitutional history: The Framers of the Bill of Rights (and of the Fourteenth Amendment) saw the right to keep and bear arms as an individual right, entitled to the same sort of dignity and protection as the freedom of speech, the privacy of the home, the right to trial by jury, and our other constitutionally secured protections.

As the Court said when defending another often unpopular right, the privilege against self-incrimination:

> If it be thought that [a right] is outmoded in the conditions of this modern age, then the thing to do is to take it out of the Constitution [by constitutional amendment], not to whittle it down by the subtle encroachments of judicial opinion.

Constitutional rights may be respected, repealed, or modified; but they must never be ignored. CPR

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CRITICUS

Words, Words, Mere Words

Shakespeare, *Troilus and Cressida*

BY G. B. TENNYSON

IF THERE is anything we can be grateful to the First Prevaricator for, it is his inadvertently calling our attention to the importance of the use of language and of exact words regarding what and how we think and what and how we get others to think. Yes, Criticus believes that apart from the hilarity occasioned by the President's hair-splitting over the meaning of "is" and other terms, and his countless variations on "I don't remember," there really is a public benefit to be derived from just such close and minute concern for the nuances of language that the President's maneuvering occasioned. The late-night jokes, the op-ed pieces, the humor columns have been more occupied with language talk than at any time in recent memory. Criticus would even argue that the presidential performance was the most convincing argument he has yet seen that POTUS (Secret Service shorthand for "President of the United States") is exceptionally intelligent, a notion that has worn thin in recent months with the demonstrations of so much presidential folly in personal behavior. But recklessness does not rule out intelligence: they come from different parts of the person. One can show recklessness in the Monica Service Alcove and intelligence in front of the camera, provided they are not in operation at the same time.

Surprisingly to some, Criticus actually agrees with the President that "is" could be subject to more than one interpretation. "There is no sexual relation" could indeed mean there is no such thing *at this time,* whatever the case was in the past; or it could mean there is no such thing, and never has been, *as a fact of history.* That it was intended to convey the latter rather than the former is very probably the case, so I am not here defending the Presidential weaseling, only pointing out its ingeniousness. Much the same can be said for his adroit dodging with the term "legally accurate," which turns out to mean something like *legally but not in any other way accurate,* which is itself a pungent comment on the law. Even the much ridiculed "sexual relations" phrase as not covering his activity with Monica though covering hers with him can be defended (or almost — more on that shortly) when put in the context of the Paula Jones deposition definition, if indeed he was solely passive. The notion that he was solely passive being contradicted by the Lewinsky testimony and tapes is beside the verbal point, for that becomes an argument over the facts, not over the language and degenerates into

G.B. Tennyson has taken advantage of the absentee ballot and a CPR Sonderurlaubserlaubnisbewilligung *to depart on a trip to Portugal in his role as our European correspondent.*

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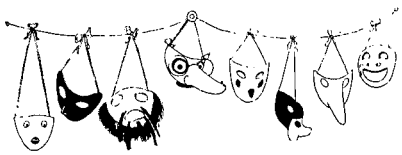
the "he said — she said" kind of argument that the Clintoniacs love because it is ultimately unprovable either way without other evidence.

Now, as to that qualification "almost": that refers to what Criticus believes was a missed opportunity on the part of Clinton's questioners. In the Jones definition, the operative word is "touch," and all involved appear to have accepted the common understanding of that verb, which is to touch with one's hands. Clinton denied having touched Lewinsky, but had the Starr lawyers been as verbally gymnastic as Clinton himself, they could have claimed that *touch* is by no means confined to the use of the hands, that it can refer to contact with virtually any part of the body. Indeed, the *Oxford English Dictionary* lists as the primary meaning of *touch:* "To put the hand or finger, or some other part of the body, upon, or into contact with something so as to feel it, to exercise the sense of feeling upon." And among other meanings of the word: "To have sexual contact with." Thus, since one can touch with any part of the body and can thereby have sexual contact with another, it appears that even by Clinton's admission of what went on, he was engaged in sexual relations. Not that anyone thinks otherwise, of course, even without this little excursion into the dictionary, but it would have been diverting to see the same game played back against Clinton. He would have needed another swig from his soft-drink can (appropriately for *his* White House a "coke") and another consultation with his lawyers.



Recklessness does not rule out intelligence: one can show recklessness in the Monica Service Alcove and intelligence in front of the camera.

BEYOND THESE now celebrated cases of verbal niggling, which I cite not as exoneration but as examples of Clinton's dexterity and as a sign that perhaps he really did deserve a Rhodes (imperialist, black-oppressor!) Scholarship, even bearing in mind that these are allocated by state, so he was competing only against Arkansans, there is that wider area of language to and for the world as distinct from lawyers that Clinton has shown himself to be equally adept with. We begin with the fact that this consummate liar never uses the word *lie* in any of its forms. He did not *lie* to the public, he *misled* it and gave a *false impression.* He did not have *sexual relations* with "that woman" or even an affair; he had *inappropriate intimate contact* and an *improper* relation with her. The telephone sex they engaged in was *inappropriate sexual banter.* He does not *apologize,* nor is he even *sorry* (though once he went so far as to be *sorry about* the matter); instead he *regrets* and even *deeply regrets.* All this is very smart stepping.

Again, my point here is not to reargue Clinocchio's honesty (is there anyone outside a mental institution who any longer believes in it?) but to point to the dexterous use of language to mitigate the severity of the charges against him. With an almost Victorian rectitude, Clinton revives the language of the nineteenth-century parlor, where gentlewomen, if driven to speak of such things at all, spoke of *limbs* rather than *legs,* where the well-bred were, in the Dickensian formulation, ever careful to say nothing that would bring a blush to the cheek of the Young Person. Thus we have Clinton describing his doings in language that might have come from the lips of Miss Prism, while the details as they emerge in the media are such that parents are once again concerned about the Young Person. This latter may be a good thing, but such concern should be first directed to motion pictures and television. Parents who send children to be babysat by R-rated films and who let their schools distribute condoms are as hypocritical as the President himself or those grizzled Democrat Party hacks and White House spin doctors who want us to think that Kenneth Starr made it all up for his own titillation and that they are gathering up their skirts and mincing carefully away in disgust. If rumor and report be true, the language in the White House private quarters is far from the Victorian genteelisms that Clinton has been using to make his case to the public. But then that, as they would like us to think of the doings in the Oval Orifice, is private conduct.

Still, one has to admire Clinton's skill at using words to put the mildest possible face on his deeds. It shows how sensitive his antennae are to what sounds right, for much of this revived Lady's-Book language Clinton has picked up from modern counseling and psychobabble.

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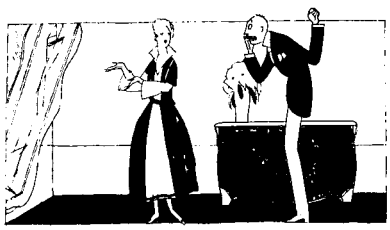
Those key words *inappropriate, improper, unacceptable,* are immensely popular among psychologists and social workers. Even the redoubtable Dr. Laura who likes to use verbal shock treatment by speaking of "shacking up" and "spreading your legs" and the like, and who constantly contemns psychobabble terms such as "low self-esteem," will time and again when it gets to the real point state simply and primly that this or that conduct is *inappropriate* or *improper.* All of this actually debases language in that it trivializes serious misconduct. These are words historically used to refer more to social lapses than to serious wrongdoing or immorality. Both *inappropriate* and *improper* refer, as their stems indicate, to what is fitting or congruent with good manners and polite deportment. To transfer them to the wider world is rather like saying that Attila the Hun's conduct at war was inappropriate or that the sneak attack on Pearl Harbor was improper.



Both *inappropriate* and *improper* refer to what is fitting with good manners. To transfer them to the wider world is like saying Attila the Hun's conduct at war was *inappropriate.*

Even the strongest of the three most commonly used euphemisms for sin and evil, namely *unacceptable,* has increasingly come to be employed chiefly in a vaguely political sense. Pressure groups constantly announce that something they don't like — logging in national parks, failure to fund a favored program, killing baby seals, some politically incorrect television show — is unacceptable. This implies that the speaker has a right to accept or reject and that argument and debate are out of the question. It sounds very strong without being very specific. Of course, for our unbiased media any such assertion if it comes from the left is definitely acceptable, and they will roll out the cameras to record it.

IN ADDITION to borrowings from the language of traditional social codes there has long been borrowing of physical and medical terms to elevate and obscure social and moral matters. Here again the Non-Inhaler has picked up the scent. Early on he made "I feel your pain" into the kind of joke that now attaches itself to the meaning of "is." But at the time, using pain to refer to social or economic discontent made it seem more serious, and for a leader to feel it right along with the proles made him seem more compassionate. Likewise the *healing* that is now supposed to be going on in the Clinton marriage suggests something richer and deeper than mere reconciliation, just as *closure* manages to imply a richer and deeper end than, well, *end.* When the Clinton fiasco is over, whatever the final resolution, we can be sure we will hear calls for healing and closure. Ex-tobacco farmer Al Gore will surely be vigorous in making such calls, as will the professional feminists who at present have lost the gift of speech but will find it miraculously restored when the time is right.

As for the First Feminist herself, these Critical musings should make us better able to see just how vastly overrated she has been. Once touted as the most intelligent woman in the world, Hillary now has to play the duped but dutiful *Hausfrau* and let her flacks give out to the media the preposterous statement that she believed that in his relationship with Monica, the Zipper was, in his oleaginous words, "ministering to a troubled young person." Within days of her alleged swallowing of this absurdity she was on television firing her blunderbuss with words that demonstrate just how inferior verbally she is to her ministering husband, even allowing that she was trying to be legally accurate. She rashly said that presidential adultery would be "a very serious offense" and that the whole thing was the work of "a vast right-wing conspiracy." These utterances were not entirely well chosen and had Clinton himself been speaking he would have phrased things more slickly. Perhaps Lady Macbeth can get around the "serious offense" statement by claiming that of course she meant "adultery" in the way Clinton meant "sexual relations." But the "vast right-wing conspiracy" — now a joke like feeling one's pain — leaves little wriggle room, however hard the White House spinners try to put the blame on the Rutherford Institute or Linda Tripp. The chief player, Monica, is no right-winger; indeed, she comes from a family that has been noted for generous contributions to Democrat causes, and it is said that it was precisely that generosity that landed Monica her intern job. For her part, Monica gave at the office.

Even the dim-witted Hillary seems to have perceived

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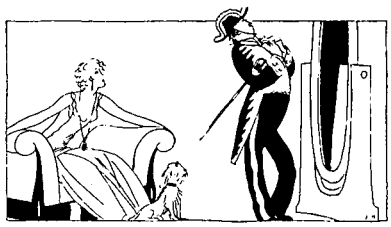
that the right-wing conspiracy rant wasn't selling, so she tried again to explain away the whole business by saying it was all anti-Arkansas bias. That must be why America twice elected a president from Arkansas. The now seasoned Clinton would have chosen his words more carefully but with equal insincerity. He would have said something like presidential adultery is a matter that would "raise concern," and that "political enemies" were behind these charges. As for the anti-Arkansas foolishness, Clinton would surely have sensed that that wouldn't sell just as he would have avoided saying that Hillary made her stock market killing by reading the *Wall Street Journal.* It looks more and more as though Hillary, like Monica, should have kept her mouth shut.



The Paula Jones case was about sexual harassment, made possible by relentless feminist propaganda that even an unwanted look was a form of rape.

HILLARY DOES have the continued and even reinvigorated support of the feminist movement, which has suddenly discovered the virtue of virtue, as it were, and is hailing Hillary as a future political candidate and even, with a straight face, as a future presidential one. They are also overusing that sexist term First Lady to draw on middle-American respect for the position. They should be calling her the First Spouse against the day when a woman is president. Through it all, feminists and others, have conveniently forgotten that it is feminism itself that caused the whole Clinton Scandal. We must not forget that the Paula Jones case that brought us Monica was a case about sexual harassment, made possible by the fanatical workplace laws that feminists had cowed society into passing and by the relentless feminist propaganda to the effect that even so much as an unwanted look was a form of rape. Radical feminism has always involved a twisting of language, making, for example, that good old military word *harassment* carry a new social and political burden and giving rise to a host of politically correct verbiage such as that non-word *lookism.* Now we find feminists *vis-à-vis* Monica reverting to that once-popular masculine sentiment that amounted to, "Well, she was asking for it."

Needless to say, the corruption of language is not an invention of Billary or the feminists. It has always gone on, though often for different motives. Most euphemisms in the past were designed to moderate social and sexual matters, whereas today they are more likely to be directed to political and racial issues. Politics has always been the home of verbal weaseling, especially during campaigns, so it is no surprise that political campaigns as carried on by television advertisements, which is for all practical purposes the only way they are carried on in California, involve such a strong element of the linguistic equivalent of the false positive. Some notable instances: candidates "support," "push for," "fight for," "stand behind" — what? "better education," "stronger laws against crime," "improved working conditions," "greater opportunity." If this kind of thing weren't such an ancient practice, one would think they had all gone to the Clinton School of Political Discourse.

But Bubba-speak is not only both vague and devious, it also resembles PC-speak. When Criticus first wrote about politically correct speech a half-dozen years ago in these pages, he felt obliged to define what it was for the then-unknowing reader. Today the matter is subject for humor on chat shows, but that does not stop the onward march of these ideological euphemisms, as I call them. I use this term to distinguish a PC-locution from the traditional euphemism which was designed to shield delicate sensibilities from social and especially sexual explicitness and coarseness. Now, politically correct language is designed to shield sensibilities from certain kinds of direct speech, yes, but also to change our thinking about the subject entirely. When the social world from which Clinton and others purloined "inappropriate" and "improper" was in control of the language, one might speak of a "fallen woman" rather than a prostitute, but the point was to convey precisely that she was a prostitute. But today when one speaks of "undocumented workers" or "immigrants looking for a better life," the aim is not simply to find an inoffensive word for illegal aliens but to make us think differently about them, to remove from them and from our minds the very notion that these people are violating the law. When they first began using men's as well as women's names for hurricanes, the purpose was to take away the notion that women more

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than men were tempestuous. Lately Criticus has noticed that hurricanes have also dropped their gender, male or female, when being referred to. We no longer read or hear in respect to Hurricane Victor or Victoria that he or she vented his/her fury on such-and-such a place: both have become "it," apparently in an effort to take all human association away from so violent a thing as a storm. Whether or not one calls this debasing language, as I do, one must at least admit that it makes it much less interesting. Soon, I suspect, it will be prohibited to refer to ships as "she."

We can take some small comfort from the fact that all of this sort of thing is still open to ridicule, and sometimes ridicule of a daring sort.

CRITICUS NOTES with disapproval that even the self-satisfied French, convinced as they are of the superiority of their language over all others, have succumbed and changed the term and consequently the name for the museum from *art primitif* to *art premier.* They have obviously forgotten that as recently as the last century *primitif,* like English *primitive,* meant simply "first" or "early." To be sure, it subsequently came to signify also untutored, simple, unsophisticated, possibly even crude and childish, and certainly non-Western. But for most that is exactly wherein its charm resided. To call it now "First Art" is to make it sound weary, stale, flat, and unprofitable.

We can take some small comfort from the fact that all of this sort of thing is still open to ridicule, and sometimes ridicule of a daring sort. The other day Criticus came upon a young man in Westwood who would have confounded the average liberal, making him wonder whether the purpose of Reconstruction had really been served. The lad was brazenly wearing a tee shirt with a Confederate flag on the back and on the front across the top the legend University of Mississippi, and below it in larger letters OLD MISS, and below that: A Predominantly White School. It reminded Criticus of the time he wore on campus a white tee shirt with a drawing in grey of the fountain and statue of Eros and superimposed upon it, in large green letters the word *Lillywhites,* below that in smaller green letters "Piccadilly Circus." He escaped stoning but not stony stares. It dawned on him that no one recognized the logo and colors of the family-named sporting goods store, Lillywhites, in Piccadilly Circus, which is understandable enough, but they must have assumed it meant something else. Presumably they thought the drawing of dear little Cupid was of a vicious warrior shooting arrows at anyone who was not lily white. Naturally it was too much to expect UCLA students to understand a spelling distinction or recognize the Eros statue or to understand what the strange words Piccadilly Circus meant.

But, back to the future. Last year in Bonn, Criticus encountered a university student walking about with a white tee shirt adorned with three words, one above the other, in large black letters covering the entire front. They were three highly colloquial German words for, to use an old-fashioned euphemism, sexual congress. If this is possible in a country that mandates that no fresh bread can be sold on Sunday and that no one may make any noise in the street in mid-afternoon because that is when old people take naps, it almost looks as though the language war has been lost. The fact that the German High Court, ignoring Criticus's advice in these pages last year and the sentiments of 88 percent of the German-speaking population in a half-dozen countries, has ruled in favor of a proposal to modernize spelling and grammar does suggest that language corruption is rampant worldwide. The German High Court must think it is the U.S. Supreme Court. At least the French heeded my warnings and retained the circumflex. On the plus side the Germans show little sign of abating their use of compounds, also adverted to by Criticus in the last number, and left mostly undisturbed by the recent decision. If Boy Clinton could devise a compound to describe what it is that he and she did that wasn't sexual relations, he would have my support, in that vague political sense of the term alluded to above. But that compound would have to equal in its plenteousness the following recent German one for a law on industrial projects that somewhat, but only somewhat, mitigates the decision of the High Court. Repeat after me:

Genehmigungsverfahrensbeschleunigungsgesetz

I doubt even the Creep and the Intern with all their experience of being almost alone and ministering to one another could wrap their tongues around that one. CPR

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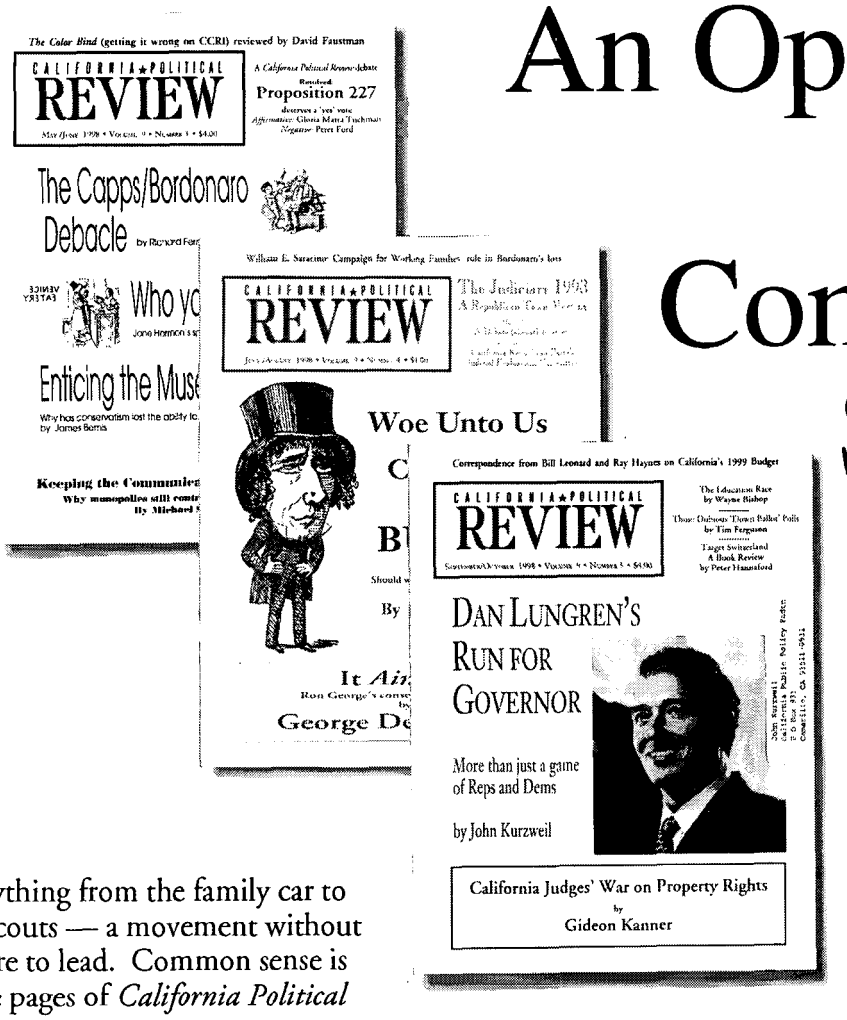

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— Irving Kristol

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